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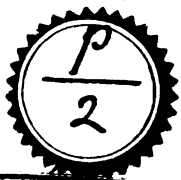
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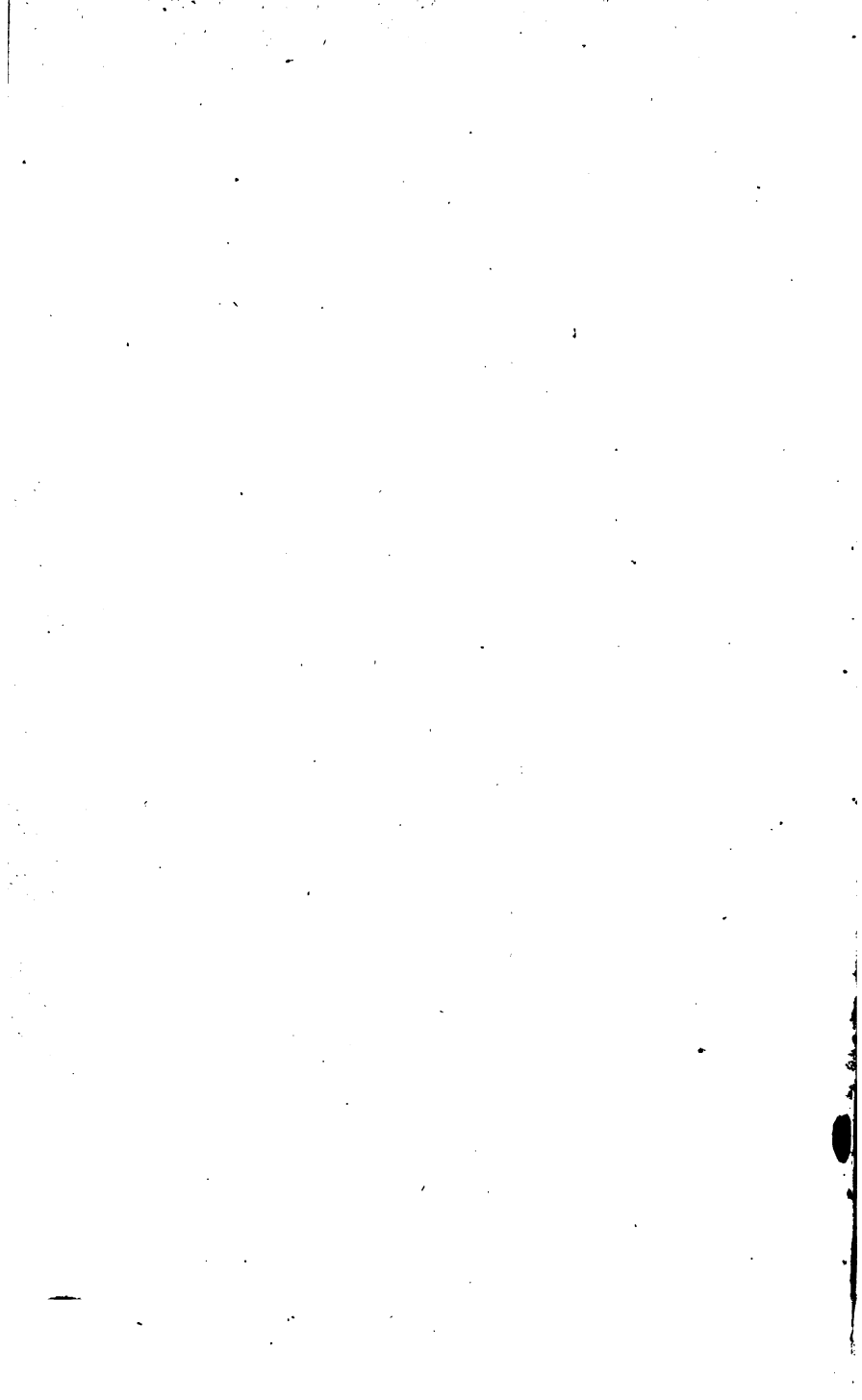
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A SELECT
COLLECTION
Of REMARKABLE
TRIALS:

In One VOLUME.

VIZ. Of

The Duke of *Norfolk*, and the
Lady *Mary Mordaunt*, for a
Divorce.

Patrick Hurley, for Pejury.

Dr. Henry Sacheverell, for a
Misdemeanor.

James Earl of Derwentwater,
William Lord Widdrington,
William Earl of Nithsdale,
Robert Earl of Carnwath,
and *William Lord Nairn*, for
High Treason.

George Earl of Wintoun, for
High Treason.

Robert Earl of Oxford, for High
Treason, and other High
Crimes and Misdemeanors.

Major Stede Bonnet, and Thirty-
three others, for Piracy.

Jeffery Gilbert, Lord Chief
Baron of Ireland, *John Pock-
lington*, Esq; and Sir *John
St. Leger*, Barons of the
Exchequer, for a Contempt
of the House of Lords.

Hugh Reason and *Robert Tran-
ter*, for the Murder of *Ed-
ward Lutterel*, Esq;

Arundel Coke, alias *Cooke*, and
John Woodbourne, for slitting
Mr. *Crispe's* Nose.

Christopher Layer, Esq; for
High Treason.

L O N D O N :

Printed for HENRY ANDERSON, near *St. Paul's*.

M.DCC.XLIV.

1744

A SELECT

COLLECTION

OF REMARKABLE

TRIALS

In One VOLUME.

W. N. OF

Major Stedman, and Thirty-
four other officers of the
Army, who were taken
prisoners of war by the
French, in the year 1759,
and who were afterwards
released by the French
Government, in the year
1763, in consequence of
the Treaty of Paris.

The Duke of York, and the
Lady, who were taken
prisoners of war by the
French, in the year 1759,
and who were afterwards
released by the French
Government, in the year
1763, in consequence of
the Treaty of Paris.

LONDON:

Printed by Henry Lacey, at the Sign of the

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between his Grace the Duke of Page 558.
NORFOLK and the Lady MARY
MORDANT, in February and
March, 12 W. III. 1699.

V I Z.

- I. *The Journal of the House of Lords, together with the Bill.*
- II. *The Depositions before their Lordships.*
- III. *The Examination and Evidence of the Duke's Witnesses.*
- IV. *The State of the Case on both Sides.*
- V. *Bishop Cousens's Argument, proving that Adultery causes a Dissolution of Marriage.*
- VI. *The Pleadings of the Learned Council before the Honourable the House of Commons and the Committee, with other Matters relating thereto.*



T were to be wish'd, that the *Proceedings*
 Editors of the two last Volumes of on the Bill of
Folio Trials, had given us this and Divorce be-
 some others they have publish'd, a tween the
 little more perfect than we find Duke and
 them. Here are none of the Dutcheſs of
Proceedings on the two former Bills, which the *Norfolk.*
 Duke brought ſome Years before, in order to
 obtain a Divorce, which were rejected : No: are
 VOL. VIII. B there

Proceedings in Parl. between the Duke

there any of the Arguments or Speeches made in the House of Lords by the Council, for and against the present Bill ; or the Speeches of any of the Members there : We see nothing but the bare Evidence : The State of the Case by the Duke and Dutcheſs reſpectively ; Biſhop *Couſens's* Arguments for the Diſſolution of a Marriage in Caſe of Adultery ; and the Arguments of the Council before a Committee of the Commons, for and againſt this Bill. I think it extremely proper therefore to give a ſhort State of the Caſe, before I enter upon the Proceedings in either Houſe in the Year 1699, when the Bill paſſ'd : for this being the laſt Tranſaction that happen'd in point of Time, ſeems to ſtand a little prepoſterouſly in the Front of theſe Proceedings.

A State of the
Caſe by the
Dutcheſs.

The Dutcheſs, in ſtating her Caſe, obſerves, That upon her Marriage with the Duke of *Norfolk* in the Year 1677, her Father, the late Earl of *Peterborough*, paid as part of her Portion ten thouſand Pounds, and ſettled on that Marriage, Lands of near the Value of a thouſand Pounds *per Annum*, the Remainder of which, on Failure of Iſſue, was limited to the Duke and his Heirs. That the Earl alſo ſecur'd to the Duke the Reverſion of *Drayton*, after his own and his Lady's Death, which was worth ten thouſand Pound more ; and receiv'd alſo by Agreement, a thouſand Pound *per Annum*, for twenty Years, out of the Earl's Eſtate ; beſides very rich Jewels, Plate, &c. of great Value, which the Dutcheſs brought with her. And great Debts being contracted for the Support of the Duke's Honour and Service while he cohabited with the Dutcheſs, ſhe had, ſince his Separation from her, paid them out of her own Eſtate.

That the Duke, by the malicious Inſinuations of her Enemies, was prevail'd on to carry her, then a Proteſtant, into *France*, and put her into a Nunnery, where ſhe cou'd not be admitted without changing her Religion, and left her there

on great Assurances of sending for her home in a little time.

That by the Duke's Consent, a considerable time afterwards, she return'd to *England*, and liv'd at *Drayton* in *Northamptonshire*; and at the Revolution retir'd again into *France*, where she continu'd till she heard of her Father's Imprisonment in the *Tower*, and then came back to *England*, and liv'd privately till her Father was discharg'd, and then she came home to him: That in *January*, 1691, by the Instigation of her Enemies, the Duke was prevail'd on to exhibit a Bill against her in the House of Peers, of the same Tenour with the present; and after Examination of Witnesses, and a solemn Debate, that Bill was rejected in *February* following: Notwithstanding which, the Duke exhibited another Bill in *December*, 1692, which after several Debates, was rejected likewise in *January* following.

That some time after, Proposals were made to the Dutchess for accommodating all Differences between them, and Articles executed by the Duke and Dutchess on the twenty-eighth of *April* 1694; whereby, for the quieting all Differences and Disputes, the Dutchess convey'd the Manour of *Castle-Rising*, &c. to the Duke's Use; and she, with her Trustees, likewise assign'd their Interest in a considerable part of the Manour of *Sheffield* in *Yorkshire* to the Use of the said Duke, whereby the Duke had his then desir'd Advantages: And the Dutchess assur'd his Grace, that she wou'd avoid all Company for the future which shou'd give him any Offence, and wou'd not so much as pay a Visit but where he liked; and that if she died first, she wou'd leave the Duke her Estate.

That notwithstanding the said Agreement, whereby the Duke and Dutchess agreed to live separately, yet without signifying any Dissatisfaction, or without any manner of Notice, or previous Proceeding in the ordinary Course of Justice, he did on the sixteenth of *February*,

Proceedings in Parl. between the Duke

1699, exhibit this Bill in the House of Peers, for dissolving his Marriage with the Dutchess, and enabling him to marry again.

The Case stated by the Duke.

The Duke, in Answer to this Representation of her Grace's Case, said, That neither he himself, nor his Father, had receiv'd from her Grace's Family any more than ten thousand Pound; and absolutely deny'd his having a thousand Pound *per Annum* for twenty Years to his Use, as was pretended, or that he had the Value of five Pounds in Jewels, Plate, or other things, from her or her Family; but that soon after they married, he was oblig'd to borrow fifteen hundred Pound to buy Linnen and Household Goods. That within the Space of three Years, which happen'd between the late Duke's Death and the parting of the Duke and Dutchess, she ran him out by extravagant Expences near thirty thousand Pound more than his Income; to pay which, he sold his Life in two thousand four hundred Pound *per Annum*, out of his Estate in *Sussex* and *Yorkshire*.

That she had been so far from paying any Debts of his, that he had been sued and forc'd to pay several considerable Sums to Tradesmen, being Debts contracted by her without his Privity, though she had a thousand Pound *per Annum* Pin-Money all the while.

That upon her Refusal to go into the Country, and her Father's refusing to receive her into any House of his, of her own Motion she went to *France*; but the Duke did not concern himself whether she came back or not, or ever heard of her Change of Religion, till he felt it as well as heard it, by her suing him in the High Commission Court for Alimony, which forc'd him to retire beyond Sea, from whence he return'd about two Months before his present Majesty King *William* landed.

Mr.

Mr. *Northey*, one of the Duke's Council, also gives us the following ſhort State of the Caſe.

He ſays, The Duke and Dutcheſs were married in the Year 1677; that they liv'd together till about the Year 1685, and then the Duke having ſome Account of her Galantries, they parted. That in *May*, 1689, ſhe lodg'd with Sir *John Germaine* at the *Cockpit* for two Months; after which, thinking it convenient to be a little more private, it was given out ſhe was gone to *France*, but in Truth, ſhe remov'd only to *Vaux-hall*, to a Houſe that was taken by Sir *John Germaine's* Brother, and went by the Name of the Lady *Beckman*, living there two Years ſucceſſively; and Sir *John Germaine* came thither frequently once or twice a Week, and lay there a-Nights during that time. After ſhe had liv'd two Years at *Vaux-hall*, ſhe remov'd in the Year 1691 to her Houſe at *Mill-bank*, and there Sir *John* and ſhe were frequently ſeen in Bed together, which the Duke having Notice of, brought the two former Bills for a Divorce: but the Dutcheſs and Sir *John Germaine*, to avoid the Condemnation, kept the Witneſſes out of the way, and afterwards ſent them to *Holland*. And notwithstanding the Dutcheſs's having been thus twice publicly charg'd with theſe infamous Courſes in the Houſe of Lords, ſhe frequently came to Sir *John Germaine's* Houſe in the Years 1695 and 1696, &c. which occaſion'd the bringing of this Third Bill into the Houſe of Peers to obtain a Divorce, the Subſtance whereof follows.

It ſets forth, That *Henry Duke of Norfolk*, The Bill and Earl Marshal of *England*, did, ſome Years ſince, marry the Lady *Mary Mordant*, and that ſhe had for divers Years liv'd in Separation from him, and had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*, Bart. That ſhe was guilty of Adultery on her part, and had broken the Bond of Matrimony: And

forasmuch as the Duke had no Issue, nor cou'd hope for any but spurious Issue, to succeed him in his Honours and Estate, unless the said Marriage was declar'd void by Act of Parliament, and he was enabled to marry again, he prays that the said Bond of Matrimony be, And it is thereby Enacted and declar'd to be dissolv'd, vacated, and made void, to all Intents and Purposes whatsoever ; and that it shall be lawful for the said Duke to contract Matrimony with any other Woman or Women, as if the said Lady *Mary* were naturally dead ; and that all and every the Children born in such Matrimony, shall be deem'd born in lawful Wedlock, and inherit the Honours and Estate of the said Duke, according to the Course of Inheritances within this Realm. And it was Enacted, That the said Lady *Mary* shou'd be barr'd and excluded all Dower and Thirds in the Honours, Lands and Hereditaments of the said Duke ; and that all Conveyances, Joyntures and Settlements, made by his Grace or his Ancestors, for the Use and Benefit of the said Lady *Mary*, or the Issue of her Body, shou'd be utterly void : And also that all Limitations and Creations, of any Use, Estate, Power or Trust, made by the Ancestors of the said Lady *Mary*, to or for the Use or Benefit of the said Duke, his Heirs or Assigns, out of any of the Lands or Hereditaments of any of the Ancestors of the said Lady *Mary*, shou'd be void. And it was further Enacted, That the said Duke, his Heirs, Executors or Administrators, shou'd, before the twenty-fifth of *March*, 1701, pay unto the said Lady *Mary*, or her Assigns, the Sum of ten thousand Pound, which was her Marriage Portion ; and in Default of Payment thereof, the said Lady *Mary* shou'd be entitled to such Jointure and other Advantages, as she might have claim'd by Virtue of her Marriage Settlement, dated the thirteenth Day of *June*, 1677 ; and by Virtue of the Agreements contain'd in certain Articles dated the twenty-eighth of *April*, 1694 ; and also shou'd enjoy, during the

the joint Lives of the ſaid Duke and Dutcheſs, five hundred Pound *per Annum*, by Virtue of a Quadrupartite Indenture made the fifteenth of *June*, 1694 : And in ſuch Caſe, the ſaid Duke, his Heirs, &c. ſhou'd be diſcharg'd from the Payment of the ſaid ten thouſand Pound ; but on Payment of the ſaid ten thouſand Pound, the ſaid Lady *Mary* ſhou'd be wholly barr'd and excluded of her ſaid Jointure, and of all other Advantages out of the real and perſonal Eſtate of the ſaid Duke.

The Bill being read the firſt time in the Houſe of Lords on *Friday* the fixteenth of *February*, 1699, it was order'd that the Dutcheſs of *Norfolk* might have a Copy of the ſaid Bill, and that the Duke ſhou'd be heard by his Council to make good the Allegations in it on *Tueſday* following, and that the Dutcheſs might have Council to attend at the ſame time if ſhe pleaſed.

The Bill read the firſt Time in the H. of Peers.

On *Saturday* the ſeventeenth of *February*, the Petition of the Dutcheſs of *Norfolk* being read, praying to be heard by her Council before any further Proceedings on the ſaid Bill, it was order'd that ſhe ſhou'd be hear'd by her Council on *Tueſday* next, and that *William Lane* and *John le Fountain* do attend the Houſe on the ſame Day, as Witneſſes on the Behalf of the Duke of *Norfolk*.

The Petition of the Dutcheſs to be heard by her Council againſt it.

On *Monday* the nineteenth of *February*, the following Witneſſes alſo were order'd to attend on the behalf of the Duke of *Norfolk*, viz. Mr. *Daniel Germaine*, Mr. *Simon Briane*, alias *de Brienne*, Mrs. *Anna-Maria Briane*, alias *Brienne*, and Mrs. *Judith Poſſette*, alias *Perſode*, the next Morning at eleven a-Clock.

Page 560.
Order for the Witneſſes to attend.

On *Tueſday* the twentieth of *February*, after hearing Council for the Dutcheſs on her Petition, as alſo Council for the Duke, the following Order was made, viz.

That the House will bear Witnesses for the Duke, only to Matter of Fact since the rejecting the first Bill, except only Mr. Daniel Germaine, Mr. Simon Briane, Mrs. Anna-Maria Briane, Mrs. Judith Poffette, and Mrs. Eleanor Vanese, who are at Liberty to give Evidence to Matters of Fact before that Time, which were not then before the House, and they are requir'd to attend to Morrow Morning; as also William Bayly and Edmund Davies at the same Time, as Witnesses for the Duke.

On Wednesday the twenty-first of February, the House being inform'd that Endeavours had been made to serve Orders on the Duke of Norfolk's Witnesses, and several of them were sick, and others were not to be found; and a Certificate under the Hands of John Hutton and Theodore Colladon, Doctors of Physick, was produc'd and read, as follows, viz.

We whose Names are under-written, Doctors of Physick, do certify, That Mary, Wife of Simon de Brienne, and Judith, Wife of Peter Persode, have been for some Time, and are at this present, so extraordinary ill in Bed, that neither of them can remove from thence without Danger of their Lives.

Sign'd,

John Hutton.
Theodore Colladon.

After which an Order was made, That Doctor John Hutton, and Doctor Theodore Colladon, do attend the House the next Day.

Then the Form of the Oath to be given the Witnesses was sett'd, and was as follows.

You

You ſhall true Answer make to all ſuch Queſtions as ſhall be ask'd you by this Honourable Houſe, in Relation to the Charge of Adultery, in the Bill brought in by the Duke of Norfolk againſt the Dutcheſs of Norfolk with Sir John Germaine. You ſhall declare your whole Knowledge of this Matter, and ſhall ſpeak the Truth, and nothing but the Truth, as well upon the Matter as you ſhall be examin'd on behalf of his Grace the Duke of Norfolk, as upon ſuch Interrogatories as ſhall be exhibited on behalf of the Dutcheſs of Norfolk, without Favour or Affection to either Party, ſo help you God, and by the Contents of this Book.

The Oath of the Witneſſes.

The Council being call'd in, the Duke's Council open'd the Nature of their Evidence, and Mrs. *Eleanor Vaneſſe* was ſworn; who appearing to be a *Dutch* Woman that did not well underſtand *Engliſh*, it was order'd therefore, that the Duke's Council ſhould have one Interpreter, and the Dutcheſs's another; and that the Duke's Agents ſhould forthwith deliver a Liſt of the Witneſſes they intended to examine, to the Dutcheſs of Norfolk or her Agents: and two other Witneſſes, viz. *William Allen* and *John Maiſland* were order'd to attend on behalf of the Duke with the reſt the next Day.

Page 561.

Interpreters order'd.

And a Liſt of Witneſſes.

On *Thursday* the 22d of *February*, Dr. *Colladon* and Dr. *Hutton* were call'd in, and depos'd, that Mrs. *Briane* and Mrs. *Perſode* could not ſtir Abroad without endangering their Lives: Then the two Interpreters took the following Oath, viz.

You ſhall well, truly, and faithfully interpret between the Houſe and *Eleanor Vaneſſe* the Witneſs touching the Matters ſhe ſhall give in Evidence.

And on the Motion of the Council for the Dutcheſs, the Duke's Agents were order'd to give the

Proceedings in Parl. between the Duke

the Christian as well as the Surnames of their Witnesses to the Agents of the Dutchess, and as much as they could of the Places of their Abode.

Then the Duke's Council proceeded and call'd *Eleanor Vanesse*, they ask'd her several Questions in *English*, which the Interpreter render'd into *Dutch*, and she answering the Interpreter in the same Language again: He declared her Answers to the House in *English*.

Nicholas Hausseur also being sworn, gave his Testimony in *French* by an Interpreter in like manner.

The Method It was order'd, That the Short-hand Writers of examining who took the Witnesses Evidence, shou'd dictate the Witnesses to a Clerk, that what the Witnesses said might be transcrib'd, and that the Examinations with that were Foreigners. the Short-hand Writers Book and Papers shou'd be seal'd up and kept by the Clerk until the next Day, and then what had been transcrib'd shou'd be read at the Bar in presence of the Witnesses.

On *Friday* the 23d of *February* the following Witnesses were order'd to attend the next Day on behalf of the Duke, viz. *James Berger*, *Susanna Barrington*, *Frances Knight* and *James Mackdonell*.

Witnesses order'd into Custody for not attending. On *Saturday* the 24th of *February*, Oath being made that a Copy of the Order of the House for Mr. *Simon Briane* to attend as a Witness for the Duke of *Norfolk* was left with his Servant at his Dwelling Place, and he not attending, it was order'd, that the Serjeant at Arms bring him to the Bar of the House to answer his Offence.

The Witnesses, sign their Examinations. The Council and Witnesses being call'd in, and *Ellen Vanesse* at the Bar, the transcrib'd Depositions from the Short-hand Writer were read to her, and she Sign'd them. In like manner *Nicholas Hausseur's* Deposition was read, and he Sign'd it.

On *Monday* the 26th of *February*, the Examination of *William Bayly*, taken the *Saturday* before, was read to him, and he being cross-examined.

mined by the Dutcheſs's Council, that Examination was alſo read to him, and he ſign'd them.

The Dutcheſs's Council mov'd for Copies of the Depoſitions taken, and Time for the Dutcheſs to be heard : Whereupon an Order was made for both Parties to have Copies of the Depoſitions, and ſo much as related to that Matter in the Journal, and another for hearing the Dutcheſs by her Council on the *Monday* following.

Depoſitions of Eleanor Vanefſe.

Question, When did you firſt come acquainted with Sir *John Germaine* and the Dutcheſs of *Norfolk* ? Page 562.

Answer, Sir *John Germaine*'s Siſter Mrs. *Briane* hired me for a Cook-maid the Summer after the King came to *England* ; I liv'd two Months with my Lady Dutcheſs at Sir *John Germaine*'s Houſe near the Cock-pit, and then I went with the Lady Dutcheſs to *Vaux-hall*. Eleanor Vanefſe, her Evidence.

Q. What Converſation had they with one another ?

A. Like Man and Wife ; I ſaw them often in Bed as Man and Wife.

Q. Did you think they had been Man and Wife ?

A. Not at firſt, but afterwards I did, and then they kept me within Doors for fear I ſhould tell it. Page 563.

Q. How long did ſhe live at *Vaux-hall* ?

A. About two Years, and Sir *John Germaine* din'd there ſometimes, and ſometimes lay there.

Q. What Converſation had Sir *John* with the Dutcheſs there ?

A. They had but one Bed, they convers'd together as Man and Wife, and he lay there twice or thrice a Week, and ſometimes but once.

Q. What Name did the Dutcheſs go by at *Vaux-hall* ?

A. By the Name of the Lady *Beckman*, and ſaid Sir *John* was her Brother.

Q. How

Proceedings in Parl. between the Duke

Q. How long did you serve the Lady Dutchess?

A. Until she went to *Mill-Bank*, and nine or ten Weeks afterwards.

Q. Have you seen Sir *John* and the Dutchess in Bed together at *Mill-Bank*?

A. Yes; once or twice; I undress'd them myself, and saw them in Bed, and carried them Chocolate, and Water to wash their Hands in the Morning.

Q. How came you to leave their Service?

A. They sent me away on account of the late Tryal, and Mrs. *Susan*, Chambermaid to the Dutchess, and Mr. *Nicholas Hosier*, Gentleman to Sir *John*, went with me.

Q. Whither was you order'd to go?

A. To *Holland*, to the *Hague*. They paid me in full, and promis'd me fifty Livres besides, which I receiv'd in four Quarters from Sir *John's* Brother *Philip* at the *Hague*; *Nicholas Hosier* took care of our Passage; and they promis'd, if Matters did not go for the Dutchess, that she would come to *Holland* her self, and take me into her Service again.

Q. Did you ever see *Nicholas Hosier* in Sir *John's* Chamber.

A. Yes: He did the Business that I did when I could not be there; he was *Valet de Chambre*: He belong'd to the Dutchess at *Vaux-Hall*, and afterwards to Sir *John*.

Q. Who liv'd with the Dutchess at *Vaux-Hall*?

A. Sir *John's* Sister, Mrs. *Briane*, and Mrs. *Judith*, another of his Sisters.

Q. Did you ever see the Dutchess's Father when you was at *Mill-Bank*?

A. I have been several times at the Dutchess's Father's; and she told her Father and Mother she brought me from *Holland*.

Q. Who was the Lady Dutchess's Father?

A. The Lord *Peterborough*; he liv'd at *Mill-Bank*.

Q. Did Sir *John Germaine's* Brother in-Law, or Sister, lye in the House?

A.

A. Yes; Mr. *Briane* and his Wife us'd to lye there when they came firſt to *England*.

Q. Did you ſee any of Sir *John's* Relations in the Room when the Dutcheſs was in Bed with him?

A. Yes; Mr. *Briane* and his Wife.

Eleanor Vaneſſe croſs examin'd.

Q. Did the Dutcheſs tell you that Sir *John Germaine* was her Brother?

A. She gave it out among the Neighbours, but never told me ſo.

Q. Was you Cook-maid?

A. I was hir'd for Cook-maid, and acted as ſuch, and us'd to clean Rooms: No body was ſuffer'd to come into the Room but Mrs. *Susan* and me.

Q. When came you from *Holland*, and how?

A. I came from *Holland* five or ſix Weeks ago, and landed at *Graveſend*.

Q. Who ſent for you?

A. I don't know.

Q. Who paid your Paſſage when you came over, and took care of you?

A. Mr. *Nicholas* paid what I ſpent, and brought me from *Graveſend* to the Place where I lodge; I don't know the Place, having never been in *London*.

Q. Did not you live at *Vaux-Hall*, and at Sir *J. Germaine's* in the *Cockpit*?

A. I was no farther than thoſe Houſes, I was never in the City of *London*.

Q. Was you not ſent for back from *Holland* to be a Witneſs?

A. No; I knew nothing of it till about eight or nine Weeks ago.

Q. How long is it ſince you went into *Holland*; and did you tell any one the Reaſon of your going?

A. It is about eight Years ago I went thither; I told the Reaſon to ſeveral in *Holland*, but to none here.

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Q. Had you any Discourse about this Matter eight Weeks ago ?

A. I met Mr. *Nicholas* about a Year ago at *Amsterdam*, and ask'd him to get me a Place in *England*.

Q. What Discourse had you with Mr. *Nicholas* about this Matter ?

A. I ask'd Mr. *Nicholas* whether there was any Danger of any such thing ; and he said, he knew nothing of it.

Q. Have not you and the Interpreter talk'd over this Matter before you came hither ; or who have you talk'd to about it ?

A. I have not talk'd with the Interpreter or any body else about it.

The Duke's Council examin'd her again.

Q. Was it your Business to look after the Chamber, and keep the Door constantly ?

A. I us'd to wash the Dutcheffs's Cloaths, and bring them to Sir *J. Germaine's* House, and keep the upper Rooms clean where he lay.

Q. Did *Susan* go over with you, and come with you again ?

Page 565.

A. Mr. *Nicholas* brought me into a Room where she was kept, and I staid a while with her.

Q. Did *Susan* go with you, and come with you again ?

A. *Nicholas* and *Susan*, and I were in a Room together, and Mr. *Germaine* came every Night when the House was broke up, and told us what pass'd.

Q. Did *Susan* go to *Holland* with you ?

A. Sir *John* order'd *Nicholas* and she to go in to *Holland*, and *Nicholas* went with her.

Depositions of Nicholas Hosier.

Nicholas Hosier
examined.

Q. Do you know Sir *John Germaine* and the Dutcheffs of *Norfolk* ?

A. I know them both ; I came into Sir *John Germaine's* Service first, when he liv'd in *Suffolk-Street*,

Street, being above half a Year before King *James* went away.

Q. Was you with him afterwards when he was at the *Cockpit*?

A. Yes; I liv'd with him at the *Cockpit* too.

Q. Was there any Lady that liv'd with Sir *John* there?

A. There was Mrs. *Brienne*, Sir *John*'s Sister, and Mrs. *Judith Germaine*.

Q. Do you know any thing of the Dutchess of *Norfolk* at that time?

A. She was in the House, and they eat and drank together, and lay together: I was his Valet, and us'd to undress and put him to bed.

Q. Where was the Dutchess at that time?

A. She was sometimes a-bed, and sometimes not; according as he came home, early or late.

Q. Did you leave Sir *John*'s Service after he came to live there?

A. I left his Service several times; the first time was in *Suffolk-Street*; and I came into his Service again the Summer after King *William* came to *England*.

Q. Was the Dutchess at the *Cockpit* before you came there?

A. She was there before, and continued there about fifteen Days after I came thither.

Q. Where did the Dutchess live after she went from Sir *John*'s House?

A. She dwelt at *Vaux-Hall*, where she went by the Name of the Lady *Beckman*.

Q. Did you go with her, or remain in Sir *John*'s Service?

A. I went with my Lady Dutchess by Sir *John*'s Order, and was sometimes with one, and sometimes with the other; sometimes one paid me, and sometimes the other.

Q. Did Sir *John* come to *Vaux-Hall*, and who lay with him there?

A. He came there several times, and lay with the Dutchess; I undress'd him when they lay together.

Q. In what Service was you when you went out of *England*, and on what Occasion did you go?

Page 566.

A. I left Sir *John*'s Service when the Trial was depending between the Duke and Dutcheſs, becauſe I was afraid I ſhould be obliged to ſpeak what I had ſeen.

Q. Did any body elſe leave their Service at that Time?

A. Two Servants of the Dutcheſs's, (*viz.*) *Suſannab Barrington*, and *Eleanor Vanefſe*; and I was ordered by Sir *John* to hire private Lodgings for them till the Wind ſerv'd for *Holland*, which was then contrary.

Q. What became of *Suſannab Barrington*?

A. She ſtaid about three Weeks with me, and then Sir *John* came and fetch'd her away; where he carried her I know not.

Q. What became of *Vanefſe* and your ſelf afterwards?

A. When the Wind favour'd we paſs'd the Sea; we came to *Holland* about *Eaſter*.

Q. Have you not a Paper under Sir *John*'s Hand for your Diſcharge?

A. Yes, it is dated the 8th of *February* 1692, when I left the Service, and about ſix Weeks after we went on board; we lodg'd in the *Minories* in the mean Time.

Q. Who bore *Ellen*'s Charges?

A. Sir *John* gave me ſeven Guineas to defray our Expences, and pay our Paſſage.

Q. When did you return to *England*? and was you ſent for over?

A. I return'd the Summer following, Sir *John* ſent for me; I enter'd into his Service again when he liv'd at the *Cockpit*.

Q. After you came back did you obſerve any Converſation between Sir *John* and the Dutcheſs?

A. I ſaw them in Bed together ſeveral Times.

Q. When was the laſt Time you ſaw them in Bed together?

A. It was not at the *Cockpit*, it was at the Dutcheſs's own Houſe, where ſhe lives now, about
three

three Months before I went away the laſt Time, which was on the 27th of *April* 1696.

Q. When the Dutcheſs liv'd at *Vaux-hall*, can you name any one elſe that was Servant in the Houſe ?

A. Yes, *Elen. Vanefſe*, ſhe look'd to the Kitchen.

Q. Have you you ſeen her in the Chamber when the Dutcheſs was in Bed there ?

A. Yes, very often.

Q. When the Dutcheſs was at *Vaux-hall*, did any Relations of Sir *John's* come there ?

A. Yes, Mrs. *Brienne*, and Mrs. *Judith*, his Siſters.

Q. Where did you meet with *Elen Vanefſe* in *Holland* ?

A. I met with her at *Amſterdam* about a Year Page 567, and half ago.

Q. Did you come over with her the laſt Time ?

A. Yes, I came over with her about ſeven Weeks ſince, and put her into private Lodgings.

Q. Why did you put her into private Lodgings ?

A. Becauſe I was afraid ſome body would do us an Injury. Sir *John Germaine* came up in a great Paſſion one Night, and ſwore this Rogue *Nicholas* would betray him.

Q. Was you or *Elcanor Vanefſe* ſpoke to to come over ?

A. I met with the Duke and my Lord *Howard* in *London* about a Year ago, and they ask'd me if I would do them a piece of Service, and bring this Girl *Vanefſe* along with me, and I promis'd them ; ſoon after I ſpoke to *Elen. Vanefſe* about her coming over to ſpeak the Truth, and we agreed to come together.

Q. When you waited on Sir *John*, who waited on the Dutcheſs in her Chamber ?

A. *Susan. Barrington*, and *Elen. Vanefſe*.

Q. Did you ſee any of Sir *John's* Relations in the Chamber when he and the Dutcheſs were in Bed together ?

A. Yes, Mrs. Brienne, and Mr. Daniel Germaine were there.

Nicholas Hofier cross-examined.

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Q. What Time did you go out of *England*?

A. We arriv'd in *Holland* about *Easter*, 1692.

Q. Was you in any Service when you told the Duke you would be true to him?

A. I was in no Service then, nor am in any yet.

Q. How long have you been out of Service? When did you leave Sir *John* the last Time?

A. It will be four Years next *June*; I have been in no Service since; I have something in my own Country on which I can subsist my self for a Time.

Q. You say you saw Sir *John* in Bed with the Dutcheß in the House where she now lives; Do you know any of the Dutcheß's Servants that were about her at that Time?

A. Yes; *Henry Keemer*, and *Susannah Barrington*.

Q. Whose Servant was you then; and who let you in?

A. I was Sir *John Germaine's*; I had a Key of the lower Room, and could come in when I pleased.

Q. What Time was this?

A. I can't recollect; but I came to bring a Clyster for Sir *John*, and was desired to stay a little while the Dutcheß got up, who was in Bed with him.

Q. What Servant brought you up Stairs; for that Key only let you into the Lower-Room out of the Park?

A. Sometimes *Susan Barrington*, and sometimes *Henry Keemer*.

Q. What Room did the Lady Dutcheß lie in?

A. It is up Stairs, I can't tell how many Stories: As you come up on the Left-hand there is a way to go into it; when you have pass'd the little Chamber-Door, you go into a Place full of *China*, and then you come to the Dutcheß's Bed-Chamber.

Q. Which

Q. Which ſide of the Park does the Window in the Dutcheſs's Room look into?

A. Towards the Pond where the Braſs Statue ſtands?

Q. Does the Window look towards *Arlington Houſe*, or the Horſe-Guards?

A. It was not my Buſineſs to go to the Window; but when I was in the Room I could ſee the Water: I did not live in the Houſe, but went there ſometimes on Meſſages. Page 569.

Q. At *Vaux-ball* and the *Cockpit*, did you underſtand the Dutcheſs as well as Sir *John*?

A. No, not the Dutcheſs.

Q. When you came into *England* about a Year ago, was any Application made to you to make a Diſcovery, or did you offer to do it your ſelf?

A. The Perſon I addreſs'd my ſelf to to get me a Service, brought me to my Lord *Howard*; it was one *Richardſon* a Woman.

Q. Can you deſcribe the Room or Furniture where the Dutcheſs lay with Sir *John* in the Houſe where ſhe now lives.

A. I don't remember whether it was hung or wainſcoted.

Q. Was the Clyſter to be adminiſtered to Sir *John* while the Dutcheſs was in Bed with him?

A. No, I laid the Syrringe to the Fire while ſhe roſe; I compoſed the Clyſter my ſelf. This was about two Month's Time before I left them.

Q. Did you ſee the Dutcheſs in Bed with him there at any other Time but when you carried the Clyſter?

A. Yes, I have, but that was the laſt Time.

Q. Which of the Dutcheſs's Servants did you keep Company with?

A. With Mr. *Keemer*.

Depoſitions of William Bayly, Saturday 25 Feb.

Q. Do you know Sir *John Germaine* and the Dutcheſs of *Norfolk*? Page 570.
W. Bayly's
Evidence.

A. Yes, I was Servant to Sir *John*; three Years I wore his Livery, and three Years I was his Steward;

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ard ; I came to live with him three Weeks before King *William* was Crown'd.

Q. Did Sir *John* and the Dutchess live together, or keep Company together ?

A. I never knew them live together, but have seen them keep Company together, tho' I have never seen any Incivility between them.

Q. Where did you see them in Company together ?

A. In my Master's House five Years ago ; he liv'd then where he lives now.

Q. Did the Dutchess ever lie there ?

A. No, she came two or three Times thither, and usually in an Afternoon about four a-Clock, and might stay there two or three Hours.

Q. You are upon your Oath, did you never see them in Bed together ?

A. By all that's good I never saw them in Bed together.

Q. Did she come thither mask'd ?

A. She us'd to come mask'd, but put it off when she came into the House ; Mr. *Keemer* and Mr. *Carter*, two of her Servants, us'd to come with her.

Q. Who was in the Room with them at Sir *John's* House ?

A. Mr. *Keemer* commonly staid with them till they had din'd, and after Dinner the other Servants and I were in the next Room ; and when they wanted any body, they call'd *Keemer*, or Mrs. *Susan. Barrington*.

Q. Did your Master use to go to the Dutchess's House ?

A. I have heard so, but cannot say positively ; I never went with him, but have gone as far as the *Horse-Ferry*.

Q. When was the last Time you saw them together ?

A. I have been out of my Master's Service these four Years, and it might be half a Year before.

Q. Do you know whither your Master went when you left him at the *Horse-Ferry* ?

A. I may judge he went to the Dutcheſſ's, but I cannot ſwear he did.

Q. Did Sir *John* come home to Bed at Night?

A. Some Nights he did, and ſome he did not.

Q. Did you carry Cloaths to him at any Time?

A. I have carried Cloaths to Mr. *Keemer*, the Dutcheſſ's Servant for him.

Q. Where did *Keemer* live then?

A. In a little Street going to the *Bowling-Alley*; he ſaid he liv'd with the Dutcheſſs, but had a Houſe there; ſometimes I carried the Cloaths to Mr. *Keemer*, and ſometimes he came for them.

Q. When *Keemer* came to you for Cloaths; what Account did he give you where your Maſter was?

A. He gave me no Account; ſometimes my Maſter lay at Home, and ſometimes he did not: Many Times he has been at the Dutcheſſs of *Mazarine's* from four a Clock one Day, to twelve the next, and when he has loſt his Gold, he has ſent to me for more.

Q. Do you know *Nicholas Hoſier*?

A. I know him very well; I ſaw him here juſt now, I ſucceeded him when he went from my Maſter Sir *John Germaine* about the Time that the Trial was here before.

Q. How long was it e'er *Hoſier* return'd again to ſerve Sir *John*.

A. To the beſt of my Knowledge it was three Years, and then he ſucceeded me again.

Q. Did not you ſee *Hoſier* in *England* before you left your Maſter's Service?

A. My Maſter ſent for *Nicholas* into *Holland* about a Year before he did come over: My Maſter told me he would ſend for *Nicholas* again, and that I and he ſhould have the Charge of his Houſe. And when *Nicholas* came over, we had the Play at our own Houſe. *Nicholas* ſtaid there ſome Time, but he did not like his Buſineſs, and ſo he went away again, becauſe he could not have all the Money.

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Q. Had you no Certificate or Discharge when you left your Master's Service?

A. No, my Master was so kind, that he brought me immediately into the Excise when I left his Service.

William Bayly *Cross-examin'd*, Monday 26 Feb.

Q. Can you be positive when you saw the Dutchess at Sir *John Germaine's* House at the Cockpit?

A. I believe 'tis about five Years ago, but I can't be positive.

Q. Was it all in one Year that you saw her?

A. I believe it was all in one Summer.

Q. Did you know the Dutchess of *Norfolk* when you saw her there?

A. I did not know her before the Trial here.

Q. Did you know her at any Time after that Trial before you saw her at Sir *John's* House?

A. I was not sure it was she, only as I had it from *Keemer*: I don't know whether I should know her now, 'tis so long since I saw her: The first Time they told me it was she, I saw her in a Coach in the *Pall-Mall* with two other Gentlewomen, a little before the Trial was here; I follow'd the Coach, and the Dutchess went into some Lady's House in *Dover-street*, and they said the Dutchess was the first Woman that came out.

Page 572.

Q. How long before this Examination did you see *Nicholas*?

A. I did not see him these three Years till now, and did admire to see him here; that a Man that had got his Bread under his Master, should appear here against him, is so ungrateful a Thing.

Q. Why did you say he was ungrateful for coming hither?

A. I should think my self ungrateful to eat a Gentleman's Bread seven Years, and do him all the Spight and Malice I could.

Q. What Harm does *Hosier* do Sir *John* in being a Witness against the Dutchess of *Norfolk*?

Do

Do you reckon it ungrateful to ſpeak the Truth againſt a Maſter ?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is the Fault then more in *Hoſier* than in you ?

A. I know not.

Q. Did *Elen. Vanefſe* (this Woman that was examined as a Witneſs) live with Sir *John* when you did.

H. Yes, ſhe liv'd there.

Thomas Hawkſworth ſworn as a Witneſs,
Monday 4 March.

Q. Do you know *Elen. Vanefſe*, and did you live in the Dutcheſs of *Norfolk's* Family ?

Hawkſworth's
Evidence.

A. I came to live with the Dutcheſs about *October* 1691. and liv'd with her two Years within two Months : *Elen. Vanefſe* was Cook-maid there, and went away the beginning of *January*, or the latter end of *December* 1691. ſhe was turn'd away to the beſt of my Remembrance for keeping Company with *Dutch* Soldiers.

Q. Was ſhe in any other Office but the Kitchen, or had ſhe acceſs to the Dutcheſs's Chamber ?

A. Never ; ſhe was not allow'd to come higher than the firſt Floor.

Q. Who waited on the Dutcheſs in her Chamber ?

A. *Frances Knight*, ſhe was conſtantly in the Dutcheſs's Chamber, and us'd to warm her Bed.

Q. You ſay *Vanefſe* was not allow'd to come higher than the firſt Floor ; explain that.

A. The Kitchen is under Ground backwards ; That Room *Vanefſe* clean'd was even with the Street, a Ground Room ; the Laundry Maid *Suſan*, who is dead, clean'd the next Pair of Stairs.

Q. How long is it ſince you liv'd with the Dutcheſs ?

A. Six or ſeven Years ; I came to the Dutcheſs the *October* before the Bill was brought in.

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Q. Do you remember when *Vanessè* was turn'd away?

A. It was about the latter end of *December*, or the beginning of *January*.

Q. Was it before or after the Bill?

A. Before I heard any Thing of the Bill she was gone.

Hawksworth Cross-examin'd.

Q. What Station were you in when you liv'd with the Dutchess?

A. A Footman: She liv'd then upon the Row between the *Horse-Ferry*, and *Mill-Bank*.

Q. Did Sir *John Germaine* never come to the Dutchess's House while you liv'd there?

A. I never saw him there; I never saw any unhandsome Thing by the Dutchess all the Time I liv'd there, and I had the Privilege of the first and second Floor, and sometimes rubb'd the Lodging Room.

Q. Did you attend on the Dutchess's Chamber in the Morning?

A. Not constantly; we took it by Turns.

Q. Which of her Women attended in her Chamber?

A. *Susan* -----, *Frances Knight*, and *Susan Barrington*.

Q. How old was you when you liv'd there?

A. About Eighteen, and am about seven or eight and Twenty now.

John Peacock sworn as a Witness.

J. Peacock's Evidence.

Q. Did you live with the Dutchess of *Norfolk* in 1691.

A. 'Tis six Years since I left her Service last *January*: I liv'd two Years and a half with her, or thereabouts. I came to her in the Month of *August*, and liv'd there both before and after the last Trial.

Q. Did you know one *Vanessè*, and what her Business was?

A. I

A. I knew one *Lena*: Her Buſineſs was below Stairs in the Kitchen: I never ſaw her in any other Room but the Outer Room next the Street: The Work ſhe was employ'd in was dirty Work; I never ſaw her clean, but naſty, and could not eat the Viſtuals of her dreſſing.

Q. Was you there before *Vaneſſe*?

A. I was in the Houſe ſometime before her Grace came over, to help the Upholder, and to carry Looking-Glaſſes and Stands: My Lady *Peterborough* order'd me to do what I did.

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Q. What was your proper Buſineſs when you liv'd with the Dutcheſs at *Mill-Bank*?

A. When the Dutcheſs went Abroad I went with the Coach; and when ſhe ſupp'd or din'd at Home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited on the Dutcheſs in her Chamber?

A. *Frances Knight*, one *Suſan*, and one *Suſannah*.

Q. Did you ever ſee this Woman *Helena* in the Dutcheſs's Bed-Chamber?

A. I never ſaw her there, nor above Stairs; I rubb'd the Bed-Chamber with a long Bruſh?

Q. Do you know when ſhe came to live with the Dutcheſs?

A. She came while I was there, and ſhe was turn'd away on Complaint of ſome Diſorders, and her Ill-dreſſing of Viſtuals.

Q. What Diſorders?

A. Men came to enquire for her in the Dusk of the Evening, and I told her Grace I did not think the Houſe ſafe, becauſe I had the Charge of Silver Spoons and Forks; one of the Men appear'd to be a Foot Soldier in a blue Coat.

Q. In what manner was ſhe put away?

A. The Dutcheſs turn'd her away upon theſe Complaints, before the Trial the latter End of *December*; and one *Gofling*, the Coachman's Wife, came in her room.

Q. Do

Proceedings in Parl. between the Duke

Q. Do you know *Hausier*, or *Nichola* ?

A. I never heard his Name before, or saw him about House.

John Peacock, Cross-examin'd.

Q. Where do you live now ?

A. I have boarded in a House at *Huntingdon* ever since I left the *Dutchess's* Service : I live on my own, and have no Employment, only I teach two or three Children out of Charity.

Q. When came you to the *Dutchess's* Service ?

A. I serv'd her about ten or twelve Years ago, and I liv'd with her before about half a Year at *Drayton* in *Northamptonshire*.

Q. How long did you leave the *Dutchess* after the Hearing came on in this House ?

A. It was about a Year and three Quarters, or two Years after.

Q. Can't you be positive at what Time you came to live with the *Dutchess* ?

A. I came about *August* to *Mill-Bank*, but the *Dutchess* was not come then ; but the *October* following she came ; I was at the *Lady Peterborough's*, and help'd to carry the Things.

Q. Did you know where the *Dutchess* liv'd then ?

A. Some said she liv'd in *Flanders*, others in *Holland*, and some in *France*.

Q. Was you never at *Vaux-hall* while the *Dutchess* liv'd there.

A. I was never there while she liv'd there, if she did live there ; but when no body liv'd there I have seen the House where they say she did live.

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Q. Do you know *Sir John Germain* ?

A. I never saw him but in his Coach ; I never was at any House where he liv'd.

Q. What Business did *Susan Barrington* do ?

Q. She help'd to dress and undress her Grace, and mend the Linnen I think : I saw her at the *George Inn* in *Huntingdon* about *August* last.

Q. Did

Q. Did *Vanessè* come with the Dutchess to *Mill-Bank*?

A. I think she came with the Dutchess.

Q. Do you know where the Dutchess liv'd before she came thither?

A. I have heard she came from *Vaux-Hall*: When my Lady Dutchess went thither by Water the Summer after, I was told she liv'd at such a House at *Vaux-Hall*.

Q. Were there any other Ladies went with the Dutchess by Water to *Vaux-Hall*, when you went with her?

A. Mrs. *Marshall* and some others, and the Dutchess told them, that that was the House she liv'd at, at *Vaux-Hall*, when she was walking in the Gardens.

Q. What do you mean by *Mill-Bank* House?

A. *Peterborough*-House.

Frances Knight sworn as a Witness, 4th March.

Q. How long have you liv'd in the Dutchess of *Norfolk's* Family.

A. Twenty seven Years and upwards, I lived with the Dutchess's Mother the Lady *Peterborough*.

Q. Did you know *Vanessè* in the Dutchess's Family at *Mill-bank*.

A. Yes, I know her very well, she was in the Kitchen.

Q. Did you use to be in the Dutchess's Bed-Chamber, and about her Person.

A. Yes; I was the first in the Morning there, and the last at Night constantly.

Q. Did *Vanessè* use to come into the Dutchess's Chamber?

A. Never: She was in the Kitchen; she was not fit come into the Dutchess's Chamber, on account of her Cloaths.

Q. Upon what account did she go away?

A. My Lady put her away because Soldiers came and ask'd for her, and sent for her to Ale-houses

*Frances
Knight's
Evidence.*

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houses at ten a-Clock at Night : My Lady would not keep a Servant that kept ill Hours.

Q. Was it before the Trial she was put away ? Consider well what you say.

A. Yes ; she was : I speak my Conscience here before the Lords.

Q. Did you never know *Vanessè* come into the Dutcheſs's Chamber, or undress her ?

A. Never, never : Oh ! fie, never indeed.

Q. Did you never know *Nicholas Hausſeur* ?

A. No : there were many ask'd for Mr. *Keemer*, but I did not know them.

Q. Did you know *Thomas Hawkſworth*, your Fellow-servant ?

A. Yes ; he came when my Lady came to *Mill-bank*, Mr. *Peacock* came before ; they were both Servants.

Frances Knight *cross examin'd.*

Q. How long is it ſince you liv'd with the Dutcheſs's Mother ?

A. After the Dutcheſs married I came to live with her and my Lord Duke.

Q. After the Duke parted with the Dutcheſs, Where did she go to live ?

A. She liv'd at *Mill-bank*, and no where else that I know of.

Q. Did she never live at *Vaux-Hall* ?

A. I never liv'd with her at *Vaux-Hall*.

Q. Then you have not lived with her ever ſince she married ?

A. I have lived with her ever ſince : I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before she came to *Mill-Bank* ?

A. She liv'd at *Vaux-Hall*.

Q. Did not you live with her there ?

A. No : I broke my Leg and was brought to her Mother's, and ſtaid there a Twelve-month ; Mr. *Peters* was my Surgeon, he can tell it. I came here to ſpeak Truth.

Q. Don't

Q. Don't be angry: When left you the Dutchess, after she parted with my Lord Duke?

A. I left her at *Mill-bank*.

Q. Do you know the Question: When did you leave the Dutchess after she parted with the Duke?

A. I know no such Question as you ask, I speak the Truth as well as I can.

Q. You went away lame you say, Where did you come to the Lady Dutchess again?

A. At *Mill Bank*.

Q. Was you ever with her at *Vaux-Hall*?

A. I was not there because I was lame.

Q. Was you ever at *Vaux-ball*?

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-Hall*, or not?

A. I tell you I was lame. I tell these Noble Lords every word I speak is Truth.

Q. But you are sworn to speak the whole Truth.

A. I speak the Truth: Why should you do so?

Q. Was you ever with the Dutchess at *Vaux-Hall*?

A. I was not able to be there with her.

Q. Was you ever there with her, or not?

A. No; I never was at *Vaux-Hall* in my Life, but at *Mill-Bank* and *White-Hall*, I have.

Q. Where was the Dutchess when you broke your Leg?

A. I left her at *Mill-Bank* with her Mother, and found her at her Mother's when I came again.

Q. Can't you tell where she was in the mean Time? Did none of the Family tell you where she was?

A. No.

Q. When did you see *Susanna Barrington*?

A. About three Weeks ago, she receiv'd a Letter from *Flanders*, telling her, her Mother was dead; whereupon I desir'd my Lady to give her leave to go to *Holland*, and she is there.

Q. How long is it since she went?

A. A Fortnight to Day.

Q. Did

Proceedings in Parl. between the Duke

Q. Did you ever see Sir *John Germaine* at the Dutchess's, or at *Mill-Bank*?

A. No ; never.

Q. You have heard that the Dutchess liv'd at *Vaux-Hall*, at what time was it?

A. I can't tell, I was sick a-Bed.

Q. Do you know what House she liv'd in?

A. Yes ; It was one Sir *Thomas Grosvenor's* at *Mill-Bank*.

Q. I ask what House she liv'd in at *Vaux-Hall*?

A. You ask what I can't tell you.

Q. Whence came the Dutchess when she came to *Mill-Bank*?

A. She came from the Place she did ; I did not ask her, I durst not be so bold.

Q. Did you never know Sir *John Germaine* keep Company with the Dutchess?

A. No ; only with the Duke at his House in the Square, I speak in the Presence of God.

William White sworn as a Witness.

Page 578.
W. White's
Evidence.

Q. Did you live with the Dutchess of *Norfolk*?

A. I liv'd with her since the first Week of the first Trial, six, seven, or eight Years ago.

Q. What Care was taken about the Dutchess's Door in the Park?

A. I generally went out first in the Morning, the Door had two Bolts, a Cross-bar, and an Iron Chain.

Q. Did you ever understand that *Hosier* had a Key to that Door?

A. I never knew any thing of it, nor knew of what use it could have been ; for he could not come in till the Door was unbolted.

Q. Did you never see him come in at that Door?

A. Yes ; I happened to be going out my self, and to open the Door for him : *Susan Barrington*, my Lady Dutchess's Maid, had lent Money to a Man in *Holland*, and she wrote a Letter by him

him to her Siſter, to get the Money ; as ſhe told me.

Q. Had you ever any Diſcourſe with *Hofier* ?

A. I was one day coming from Change and met Mr. *L'Eſtrange* and this *Hofier*, and we went together to a Tavern in *Smith-field* : He reflected on his Maſter Sir *John Germaine*, ſaid he had uſed him ill, and he deſerved to be ill uſed, and the Time would come when he ſhould repent it. This was about *Michaelmas* was two Years, or one Year, I can't tell which.

William White *croſs examin'd.*

Q. You liv'd with the Dutcheſs the firſt Week of the Trial, you ſay : Was *Vaneſſe* there then ?

A. She was gone before I came.

Q. Whoſe Servant was *Hofier* when you let him in ?

A. I was told he was Sir *John Germaine's* a little after ; he had Buſineſs with *Susannab Barrington* who ſent Letters to *Holland* by him, and by other Dutchmen, about the Money I mention'd.

Q. When did you ſee *Susannab Barrington* ?

A. About a fortnight ago, ſhe was in Tears, and ſaid her Mother was dead in *Holland*.

Q. Did you ever ſee Sir *John Germaine* in the Dutcheſs's Houſe.

A. I never ſaw him in any part of my Lady Dutcheſs's Houſe, nor in no Apartment, and I am the only Man that goes up and down Stairs.

Q. Did you lie conſtantly at the Dutcheſs's Houſe ?

A. Moſt commonly ſince ſhe came to *Duke-Street*.

Q. At what time did you uſe to open the Park Door in the Morning ?

A. At fix, ſeven, or eight, there was no certain Hour.

Q. Did you ever know *Hofier* come in at any Door but that ?

A. Yes ;

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A. Yes; one rainy Day he came in at the Street Door, and ask'd for *Susannah Barrington*.

Q. If he got in at the Park Door could he not get up Stairs?

A. He could not get into the Dutcheff's Apartment, for there was a Room between where the Plate and Jewels lay, that no Key would open.

Q. If he got in at that Door, could *Susannah Barrington*, when he was in, lead him round the House without any difficulty?

A. I cannot say but she might, but I never saw him but below Stairs with that Woman, and then he went away without going up Stairs.

Matthew Macdonnell sworn a Witness.

Page 579.

M. Macdonnell's of *Norfolk*?

Evidence.

Q. How long have you liv'd with the Dutcheffs?

A. Four Years at Lady-day next.

Q. In what manner was the Door kept, going into the Park?

A. It was bolted and lock'd: I bolted it very often at Night, and unbolted it in the Morning.

Q. Did you ever see *Hosier* come in at that Door?

A. I opened it for him once or twice in the Evening, when he rung, and he ask'd for *Susannah*, my Lady Dutcheff's Servant.

Q. Did he go up Stairs?

A. No: I call'd her to him, I never saw him go up Stairs.

M. Macdonnell cross examin'd.

Q. Did you know whose Servant *Nicholas* was?

A. I did not not know, nor I ask'd no Questions; I have seen him three times at the Dutcheff's, he ask'd for *Susannah Barrington*, and once for *Mr. Keemer*.

Q. Did you stay with him, or did you leave him?

A. No;

A. No ; to tell you the Truth, I thought he came to court *Susan*, and did not ſtay with him.

Q. When did you ſee *Susan* laſt?

A. On *Tuesday* ſev'night in the morning: not ſince.

Q. What became of her after that ?

A. She ſaid her Mother died lately in *Holland*, and ſhe was going there.

Q. Upon your Oath, don't you know ſhe is at the Dutcheſs's?

A. I know not of her being there, the Servants told me ſhe was gone.

Q. She was there when you came hither that *Tuesday* Morning.

A. On *Tuesday* Morning I did ſee her.

Q. Has the Dutcheſs taken any body to do *Susan's* Work ?

A. I don't know of any.

Mr. Robert Welbourn ſworn a Witneſs.

He depoſed, that *Mr. L'eſtrange* told him, he Page 580.
heard *Nicholas Hoſier* ſpeak very hard ill Words *R. Welbourn's*
againſt his Maſter *Sir John Germaine*. *L'eſtrange* Evidence.
being kept out of the way, as was ſuppoſed, by the
Dutcheſs, was the occaſion of examining *Welbourn*
as to what he ſaid.

Eleanor Montfort ſworn.

She depoſed, that her Husband, who had been *E. Montfort's*
executed for Coining, was very intimate with *Ni-* Evidence.
cholas Hoſier, That he told the Deponent juſt Page 581.
before he died, that *Hoſier* had a deſign to rob
his Maſter ; that he knew where his Gold and
Jewels lay, and had made falſe Keys, and would
watch his Opportunity, when his Maſter was at
play, or out of Town. That *Hoſier* left the Keys
at the Deponent's Houſe, and her Husband or-
dered her to deliver them to *Hoſier*, which ſhe
did after he was dead, and *Hoſier* look'd mightily
out of Countenance when he receiv'd them.

The Dutchess's Council then prayed, that some Agreements made between the Duke and Dutchess in 1694. might be read out of the Deeds executed for that Purpose, and they were read accordingly.

Francis Negus sworn as a Witness.

*F. Negus's
Evidence.*

Q. Did not the Dutchess send a Message to the Duke, by you, to this Purpose: That notwithstanding the Articles, she desired to know from his Grace in what manner she should live, and that she would be governed by his Directions?

A. Much about the Time of the Transaction of these Articles, my Lady Dutchess sent for me, and I waited on her, and she expressed herself very sensibly of the Misfortune of the Duke, and her self, and desired I would let my Lord Duke know it: That she would avoid all Company that should give him Offence, and would not so much as pay a Visit but where he liked. I acquainted my Lord Duke with something to this Purpose, for she often said, If she happened to die before my Lord Duke, she would leave him her Estate.

Q. Do you know of any Message of Complaint sent to the Dutchess since, that he would have her live in any other way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord Duke ever desired her to come and live with him.

A. I never heard any such thing.

Q. Had you any Directions to attend the Duke, that he would give way in a Controversy between the Dutchess and a Noble Lord, to know whether he would waive his Privilege?

A. When the Duke sent for me, he enquired whether by the Agreement, he was oblig'd to let her have the Privilege. I said, I understood it so; and tho' he had no mind to do it, yet as he had waved his Privilege in the Case of an Uncle, he would do it for her.

Sir Thomas Powis, I would only make use of it as an Instance of Kindness between the Duke and Dutchess.

The

The Council for the Dutcheſs having finiſh'd their Evidence, the Duke's Council deſired to call Witneſſes to ſupport *Nicholas Hauſier's* Reputation.

William Allen ſworn as a Witneſs.

He depoſed, that being a Butcher; *Nicholas Page 582. Hauſier* bought Proviſions of him when he liv'd *W. Allen's* with Sir *John Germaine*, and paid him very Evidence. honeſtly for them.

Richard May, Houſe-Steward to the Duke of Norfolk, ſworn.

He depoſed, that about a fortnight before his Grace had directed him to make Proviſion for *Nicholas Hauſier* and *Ellen Vanefſe*, and that he took them into his Grace's Houſe in *St. James's Square* thereupon, and had provided for them ever ſince.

Q. Had they the Liberty of the Houſe, or were they kept cloſe?

A. They were kept only as they deſired themſelves: No body was denied Liberty to ſee them, they deſired to be there rather than in any other Place.

Q. Do you know of any Reward they have had, or are to have?

A. I know of none.

Chriſtopher Raine ſworn.

He depoſed, that he was Servant to the Duke *Page 583. of Norfolk*, and that *Nicholas Hauſier* and *Ele- C. Raine's anor Vanefſe* came to his Grace's Houſe about a Evidence: fortnight ſince, that they had the Liberty of going where they pleaſed; but he did not know they had been abroad ſince they came thither.

Edward Cotter ſworn.

He depoſed alſo, that they were brought to the *E. Cotter's* Duke about a fortnight before.

Francis Huddleston sworn.

F. Huddleston. He depofed, he was Servant to the Duke, and that he faw *Hauſier* and *Vanceſſe* at Captain *Soames's* Lodgings in *Gerrard-Street*, with the Lord *Howard*, about a fortnight before.

Proceedings
in the Houſe
of Commons.

Page 585.
The Dutch-
eſſ's Petition.

There being no farther Account of the Proceedings in this Cauſe before the Houſe of Peers in the Folio Edition, I ſhall in the next Place obſerve, what was tranſacted in the Houſe of Commons in this great Cauſe. And firſt we meet with a Petition from the Dutcheſſ, directed to the Knights, Citizens, and Burgeſſes in Parliament aſſembled, ſhewing, That for putting an end to all Differences between the Duke and her Grace, Articles of Agreement had been entered into, and executed in *April 1694*, by the Duke, her Grace, and her late Father, the Earl of *Peterborough*, whereby, and by Deeds executed, purſuant thereto; the Duke had his then deſired Advantage, and had fully enjoyed the Benefit thereof; and that her Grace about the time the ſaid Deeds were perfected, ſignified to the Duke by Mr. *Negus*, that ſhe ſhould always readily comply with all ſuch Orders, in her way of Living and Converſation, as he ſhould think fit to appoint. Notwithſtanding which, and without ſignifying any Diſſatisfaction with her, and without any manner of Notice or previous Proceeding in the Eccleſiaſtical Court, he did on the 16th of *February* laſt, exhibit a Bill in the Houſe of Peers, entitled, *An Act to diſſolve the Duke of Norfolk's Marriage with the Lady Mary Mordaunt, and to enable him to marry again*. Upon which the Proceedings were ſo very quick, two Witneſſes lately brought from beyond Sea, being forthwith examined againſt her Grace, who was charged with Facts ſuppoſed to be committed many Years ſince, and long before the date of the ſaid Articles, whereby ſhe was unprepared to make her Defence, as ſhe might have done if the Proceedings had been againſt her according to the known
Laws

Laws of the Land. The Places of abode of the Witneſſes produced being yet unknown to her; and her Grace having notice that the ſaid Bill had paſſed the Lords, and was ſent down to that Honourable Houſe for their Concurrence. She prayed ſhe might be heard by her Council at Law, and one Civilian againſt the ſaid Bill.

A Day being appointed by the Commons for the Committee to proceed in this Cauſe, the Duke publiſhed the following Papers in the mean time.

If want either of Precedent for a Parliamentary Divorce, before going through the tedious and ineffectual Methods of *Doctors Commons*, or of Demonſtration of Fact, have hitherto deprived the Duke of Norfolk of that Relief againſt his Wife's Adultery, which the Divine Law allows; the late Statute made in the like Caſe, and the coming in of two, who while the Duke's former Bill was depending, had been ſent away to prevent that Diſcovery which they now make, cannot but be thought to remove all Objections againſt an Act of Parliament not only for the Benefit of the Duke, but of the Publick, as a Means to preſerve the Inheritance of ſo great an Office, and Honours to Perſons of the true Religion.

The Duke of Norfolk's Reaſons for paſſing his Bill.

And ſince Biſhop *Cozens's* Argument in the Lord *Roffe's* Caſe has made it evident, that thoſe Canons which govern the Spiritual Court in this Matter, are but the Remains of Popery, nothing can be now requiſite to ſatisfy the moſt ſcrupulous of the reform'd Religion, but to ſet the Duke's Proof of his Lady's Adultery in a true Light.

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The Reputation which the Dutcheſs had maintain'd of Wit and Diſcretion, made it difficult for many to believe that ſhe could be ſurprized in the very Act of Adultery, as had been formerly prov'd. And tho' it then appeared, that one *Henry Keemer* liv'd with the Dutcheſs, while ſhe went by a feigned Name, at a Houſe hired for her at *Vaux-Hall*, by Sir *John Germaine's* Brother; and that *Nicola*, who then liv'd with Sir *John*, us'd to receive *Wood*, ſent from the

Dutchess to Sir *John's* House by the *Cock-Pit*, the withdrawing of *Nicola*, and carrying with him the *Dutch Maid*, equally entrusted with the Secret on Sir *John's* Side, left no Evidence of their constant Conversation but *Keemer*, since dead, and *Susannah Barrington*, who had the like Trust from the Dutchess.

Keemer, tho' very unwillingly, some Years since confessed his Living with the Dutchess at *Vaux-Hall*, where he pretended she was obliged to conceal herself for Debt, and what Share *Susannah* had in the Secret, was unknown till *Nicola* appeared; *Nicola* coming into *England* some time since, in expectation of a Service, expressed his Readiness to discover what he knew, and to endeavour to bring with him the *Dutch Maid*.

Elizabet Vanesse
Exam. 22 Feb.
1699.

She proves, that for two Months, the first Summer after the King came for *England*, Sir *John Germaine* and the Dutchess liv'd together as Man and Wife, and were seen in Bed together by her, Mr. *Briane* and his Wife, Sir *John's* Sister, and that *Nicholas Hausfeur*, Sir *John's* Valet de Chambre us'd to be assisting to him, as the Dutchess's Woman, *Susannah Barrington*, was to her, at going to bed and rising.

She proves the like Conversation at *Vaux-Hall*, and the Dutchess's House at *Mill-Bank*, till the Duke's first Bill of Divorce was depending; within which time *Nicholas Hausfeur*, by Sir *John's* Order, carried away her and *Susannah Barrington*, with Intention of going for *Holland*, to prevent their being examin'd to what they knew; but the Wind proving contrary, they could not go till the Bill was rejected, and then Sir *John* fetch'd back *Susannah*, who was most useful to the Dutchess, but *Hausfeur* went for *Holland* with *Ellen*.

Nicholas Hausfeur.

He confirms *Ellen's* Evidence in every particular, and besides the Persons mention'd by *Ellen*, as privy to Sir *John's* lying with the Dutchess, names Sir *John's* Brother *Daniel*. *Nicholas* having been found very trusty, his Master sent for him to return to his Service, and gave him the Opportunity

tunity of proving the Continuance of the ſame Adulterous Converſation at ſeveral Times and Places, from the Summer 1692 to the 26th of April 1696. He ſwears he had after his Return to Sir *John's* Service, ſeen them in Bed together at Sir *John's* Houſe at the *Cock-pit*, and at the Dutcheſſs's Houſes at *Mill-Bank*, and where ſhe now lives, and uſ'd to be let into the Dutcheſſs's Apartment by *Suſannah Barrington* or *Keemer*. Nor can any Man who ſhall read the Teſtimonies given Mr. *Hauſeur* by Sir *John*; by the laſt of which it appears, that he ſerv'd him faithfully, as his Steward, reaſonably queſtion *Hauſeur's* Credit.

Another who had been advanc'd by Sir *John*, *Wm. Bayly*, from his Footman to Mr. *Hauſeur's* Place, and from thence to a good Office in the Excife, very unwillingly confirm'd the Teſtimony of *Hauſeur*, and the *Dutch* Maid, not only as to the Time of their going from the Service of Sir *John* and the Dutcheſſs, but tho' being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery, and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch* Maid, yet he ſwears, the Dutcheſſs uſ'd to come mask'd to his Maſter's Houſe, that he has gone with him as far as the *Horſe-Ferry* towards her Houſe at the *Mill Bank*, that then his Maſter ſometimes lay out all Night, and the next Morning he has carried Linnen and Clothes, for his Maſter, to *Keemer's* Houſe, or *Keemer* has fetch'd them from him. And this he proves to have been ſince the rejecting the former Bill, and about five Years ſince, when he was ſucceeded by *Hauſeur*, as before he had ſucceeded *Hauſeur*.

Two other Foreigners, *La Fountain*, who liv'd with Sir *John*, and was ſerved with Summons at the Dutcheſſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham's* ſince Summons was taken out againſt him, ſeemed to have had the ſame Truſt that *Hauſeur* had, for both declared, That nothing ſhould oblige them to betray their Maſter's Secrets; One ſaid, no

Court could dispense with an Oath of Secrefy, and both declared, They would immediately go beyond Sea. Summons have been taken out for Mr. *Briane* and his Wife, and Sir *John Germaine's* Brother (who are, or lately were in Town) to confefs or deny what *Nicola* and *Ellen* appeal to them for; and it cannot be imagin'd, that Sir *John* should chufe the Honour of being thought to have to do with a Dutcheſs, before the clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John's* Vanity ſhould prevail with him, at leaſt, it is to be preſum'd, that his Relations would be more juſt to him and the Lady, than to ſuffer any thing to paſs againſt them, which they could with Truth and Juſtice prevent.

But ſince none of them appear, the World will believe their abſenting more than a thouſand Witneſſes, in confirmation of what Mr. *Hauſeur*, *Ellen*, and *Bayley* have ſworn; whoſe Evidence not only ſtands untouch'd, by any thing offered by the Dutcheſs's Witneſſes, but is plainly confirmed by them in the principal Parts.

This being the Nature of the Proofs, 'tis obſervable.

1. That there never yet was any Caſe of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the lateſt Caſe of this kind, there was full Conviction of the Lady's having Children while ſhe lived ſeparate from her Husband, and the Preſumption was very violent whoſe the Children were; yet this was but Preſumption, and that was weakened by the Preſumption in Law, that they were the Husband's, eſpecially ſince there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Caſe by reaſon of the Interval of Parliament, and fear of the Deaths of Witneſſes, a Suit was begun in *Doctſor's-Commons*; 'twas taken from thence while the Suit was depending

tending, therefore that was rather an Objection againſt proceeding in Parliament, than an Argument for it.

3. In that Caſe ſeveral Witneſſes were examined at the Bars of both Houſes, who had not been examined at *Doctors-Commons*, nor any Notice given of their Names before their Examination.

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4. It appears by that Caſe and the preſent, that the Examinations in Parliament are more ſolemn and certain, than thoſe of the Spiritual Court, which depend too much upon the Honesty of the Register, or his Deputy.

5. Before that Caſe, Parliaments have either broke through the Rules which bind the Spiritual Court, as in the Caſe of the Duke of *Norfolk* ;* where the Parliament ratify'd the Marriage † as Lawful according to God's Law, tho' protracted and letted by reaſon of certain Decrees and Canons of the *Pope's* Law ; or elſe have diſſolv'd a Marriage where there had been no Application to *Doctors Commons*, as in the Caſe of Mrs. *Wharton* who had been married to Mr. *Campbell*, and yet there had been no Examination of Witneſſes, but what had been before the two Houſes |. So, long before, in the Caſe of Sir *Ralph Sadler*, upon Proof before the two Houſes that the Lady *Sadler's* former Husband had deſerted her, and diſappear'd for four Years before ſhe married Sir *Ralph*, the Parliament legitimated her Children by Sir *Ralph*.

Whereas ſome object againſt the paſſing the Bill, as if it would countenance a Jurisdiction in the Houſe of Lords to examine to ſuch matters in the Firſt Inſtance, or Originally, the Objection wou'd be the ſame if it had began, as it might, in the Houſe of Commons ; but in Truth would be of equal Force againſt moſt Private and ſeveral Publick Acts occaſion'd by the Examination of Witneſſes or Notoriety of Fact.

* 1 Eliz. c. 31. † 2 & 3 W. & M. || 37 Hen 8.
Since

Since therefore the Duke has so long and so often in vain endeavour'd to be freed from a Lady publicly fam'd and prov'd to have liv'd with Sir *John Germaine* as his Wife; the Duke's former Disappointments cannot but be Powerful Arguments for his speedy obtaining that Justice which the *Spiritual-Court* cannot give him, their Power reaching no farther than to that Liberty of living as she list, some Years since settled by Articles. But as none of less Art and Oratory than her Council could have turn'd this into a Licence to commit Adultery, if she list, or a Pardon Afterwards; had there not been Evidence of her acting according to such Construction, the Duke would have hop'd she had repented of the former Injuries he had receiv'd from her; but now hopes she shall no longer continue to bear the Name of his Wife, and put him in danger of being succeeded by Sir *John Germaine's* Issue, or deprive him of the Expectation of leaving his Honours, Offices, and Estate to a Protestant Heir.

Bishop Cozens's Argument, proving that Adultery Works a Dissolution of the Marriage: Being the Substance of several of Bishop Cozens's Speeches in the House of Lords upon the Debate of the Lord Rose's Case, taken from the Original Papers writ in the Bishop's own Hand.

Bishop Cozens's Argument for the Dissolution of a Marriage in case of Adultery.

The Question is indefinitely to be spoken of, Whether a Man being divorced from his Wife who hath committed Adultery and is convicted of it, may marry himself to another Wife or no, daring the Life of her which is divorc'd?

The Place in *St. Matthew* the 5th repeated again *St. Matthew* the 19th, has great Perspicuity, if it be not lawful for a Man to put away his Wife and marry again, except it be in the Case of Fornication (for the displacing the Words by putting the Exception before the Marriage cannot alter the Sense) then *e contrario* it must of Necessity follow, that if the Wife be put away for For-

Fornication, the Husband by the Tenour of Chriſt's Words is left free to marry again ; which Freedom is not allow'd to the Adultereſs herſelf, nor any Man elſe that ſhall marry her.

St. *Mark*, and St. *Luke* have been oppos'd to St. *Matthew* ; and it has been ſaid, that Chriſt's Words in St. *Matthew* did not properly belong to Chriſt's Diſciples, or the Chriſtian Church, as the Words in St. *Mark* and St. *Luke*, which are abſolute, do ; which is a Saying that neither I, nor I think no body elſe, ever heard before, for Chriſt's Sermon on the Mount was ſpoken to his Diſciples, and eſpecially belong'd to Chriſtians.

'Tis clear they are ſpoken to his Diſciples: for he ſays to them, that they are the Salt of the Earth, and the Light of the World, and that they are bleſſed when they ſuffer Perſecution for his Name's Sake ; which no Man will ſay or apply to the *Jews*.

'Tis true, that in the 19th Chapter of St. *Matthew* Chriſt answers the *Scribes* and *Phariſees* who came to tempt him with their Queſtion, Whether it was Lawful for a Man to put away his Wife for any Cauſe, as they ſaid *Mofes* had permitted them to do. But the Answer that Chriſt gave them, That it was not lawful but only in the Caſe of Adultery, for Men to put away their Wives and marry another, was a Rule which concern'd all Chriſtians to obſerve for ever after, and for that Reaſon was recorded by St. *Matthew*.

The Words in St. *Mark* and in St. *Luke* are not to be taken abſolutely, but to be ſupply'd and underſtood by his Words in St. *Matthew*, as in many other Caſes is clear, *viz. The Thief upon the Croſs, Baptiſm in the Name of the Father, Son and Holy Ghoſt*, &c. whereof many Inſtances may be brought, as the Deſtruction of *Nineveh*, &c.

But for Chriſt's Words the Exception confirms the Rule, and infers a Conceſſion, that in the Caſe of Fornication the putting away one Wife and marrying another is allow'd. It is alike with divers other his Exceptions which are found in Scripture : for Brevity I ſhall inſtance in this one,

viz.

viz. Except ye Repent, ye shall all likewise Perish. Upon which Text, if I, or any Bishop else were to preach, I believe we should not discharge our Duty unless we should tell the People, That if by the Grace of God they did Repent, they should not Perish.

The Exception here *et un, nisi, unless*, is parallel with 1 Kings iii. 11. *None were in the House, except we Twain*, they two therefore were, others were not.

Such Exceptions proceeding from Natural Equity, are tacitly employ'd in Laws, tho' pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Sense than as I have observ'd; for except that Restraint be referr'd to marrying again, the Sense would run thus, *Whoever puts away his Wife, commits Adultery*; which stands not with Truth or Reason, since it is not the Dismission that is adulterous, but the Marriage of another; it is therefore the plain Drift of our Saviour to teach the *Pharisees*, that the Marriage of a second Wife after a Dismission of a former for any other Cause except Fornication, is no less than Adultery, thereby inferring, that upon a just Dismission for Fornication, a second Marriage cannot be branded with Adultery.

Besides, the *Pharisee's* Question, (*Is it lawful for a Man to put away his Wife for every Cause?*) was not without a plain Implication of Liberty to marry another, which our Saviour well knowing, gives a full Answer, as well to what he meant as what he said, which had not been perfectly satisfactory if he had only determin'd that one Part concerning Dismission, and not the other concerning Marriages; which Clause if two Evangelists express not, yet it must be fetch'd necessarily from the Third, since it is a sure and irrefragable Rule, that all four Evangelists make up one perfect Gospel.

The *Romists* and College of *Dorway* urge for the *Popish* Doctrine, *Rom. vii. 2. The Woman which hath an Husband is bound by the Law to her Husband as long as he liveth.* But

But

1. This Place is to be expounded by Chriſt's Words.

2. St. *Paul* hath no Occaſion here to ſpeak of Divorce, but Marriage whole and ſound as it ſtands by God's Ordinance.

3. He ſpeaks of a Woman who is under a Husband-----, ſo is not ſhe that is divorced from him.

4. St. *Paul* uſeth this to his Purpoſe of the Law being dead, to which we are not bound: Nor is their Doctrine more favoured by 1 *Cor.* vii. 10. *Let not the Woman depart*, as being her Choice whether ſhe would depart or not; but in the Caſe of Fornication ſhe was to depart, or rather be put away whether ſhe wou'd or not.

The Bond of Marriage is to be enquir'd into what it properly is. Being a Conjugal Promise ſolemnly made between a Man and his Wife that each of them will live together according to God's Holy Ordinance, notwithstanding Poverty or infirmity, or ſuch other Things as may happen during their Lives. Separation from Bed and Board, which is part of their Promise ſo to live together, doth plainly break that part of the Bond whereby they are tied to live together both as to Bed and Board. The Diſtinction between Bed and Board and the Bond, is new, never mentioned in the Scripture and unknown to the antient Church, deviſ'd only by the Canoniſts and School-men in the *Latin Church* (for the *Greek Church* knows it not) to ſerve the *Pope's* Turn the better till he got it eſtabliſh'd in the Council of *Trent*, at which time, and never before, he laid his *Anathema* upon all them that were of another Mind; forbid- ing all Men to marry, and not to make any Uſe of Chriſt's Conceſſion.

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony, which made *Erasmus* and Biſhop *Hall* ſay, That the Diſtinction of thoſe two from the Bond, is meerly chimerical and Fancy.

The

The Promise of Constancy and mutual Forbearance, if it hinder Divorce as the Bond, hinders it also as to Bed and Board, and because the same Bed and the same Table were promised in the Marriage Contract; but the Promise does not extend even to tolerating Adultery or malicious Desertion, which according to God's Ordinance dissolves the Marriage.

Our Saviour speaks of Divorces instituted by the *Mosaical Law*, but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce among the *Jews* was this, *Be expelled from me, and free for any Body else*. To give the Bill of Divorce is from the Root *כר*, which is to break or cut off the Marriage. With this agree the antient Canons, Councils, and Fathers of the Church.

Concil. Neocesar. & Elib. forbid the retaining an adulterous Wife. *Concil. Eliber. Aurelian & Arelatens.* give Liberty in such Case to marry again, *Clemens's Constitution, Tertullian. St. Basil* in his Canons, approv'd by a General Council, are for marrying again. *Concil. Venet.* If they marry in any other Case than Fornication, they are to be excommunicated, and not otherwise. *Concil. Wormat.* gives Liberty to the innocent Party to marry after Divorce. *Concil. Lateran.* gives Leave for the innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the first, he may remain with the second.

Lactantius, St. Hierom, and Epiphanius are for Allowance of Marriage after Divorce.

Chrysostom Hom. 19. 1 Cor. 7. says, *That the Marriage is dissolv'd by Adultery, and that the Husband after he hath put her away is no longer her Husband.*

Theophylact on the 16th of *St. Luke* says, that *St. Luke* must be interpreted by *St. Matthew*. *St. Hillary* is for marrying again as *Dr. Fulk* saith upon *St. Matthew* the 17th. The *Eastern Bishops* in the Council of *Florence* are for marrying again.

again. *Juſtin Martyr* ſpeaks of a Roman's giving a Bill of Divorce to a diſſolute Husband, without finding any Fault with it.

St. *Ambroſe* ſays a Man may marry again if he puts away an adulterous Wife. *Theodore* ſaid of a Wife who violated the Laws of Marriage, *Therefore our Lord requires the Bond or Tie of Marriage to be diſſolv'd.*

All the *Greek Church* to this Day allow it. *Erasmus*, *Cajetan*, and other *Papiſts*: The Civil Law and the Laws of the *Emperor* are clear for it; and the Conſtitutions of our own Church of *England* in the time of *Hen. 8. E. 6.* and *Queen Elizabeth*.

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The Practice in the *Engliſh Church* in the Stat. 1 *Jac. c. 11.* againſt ſecond Marriages, Divorces are excepted; and in Canon 107. 'tis provided they ſhall not marry again, but 'tis not ſaid ſuch Marriages are void, only the Caution is forfeited: *Neither doth the Canon ſpeak of ſuch Separations wherein the Bond itſelf is broken, as 'tis by Fornication.*

Even the Canon Law allows marrying again in caſe a Woman ſeeks her Husband's Life, and in caſe of a Bond Woman. *Gracian* ſays in the Caſe of Adultery, lawful Marriages ought not to be deny'd. In the Caſe of an incurable Leproſy it was the Advice of St. *Gregory* to *Auſtin* the Monk, that he that could not contain ſhould rather marry. *Bellarmino* owns, That the Bond of Marriage of *Infidels* is diſſolvable, but the Marriage of the Faithful and of *Infidels* are of the ſame Nature. *Juſtinian*, a *Jefuite*, confeſſes, that it is ſimply Lawful for the innocent Party to marry again. And the *Roman Doctors* allow a Diſſolution of the Bond of Marriage if the Parties ſhould after Conſummation transfer themſelves into a Friery or Nunnery.

The Cannons which in the Caſe of Adultery prohibit marrying in the Life-time of the guilty Perſon, are contrary to two Acts of Parliaments,

* Ref. Leg. Eccleſ. Tit. de Adulterijs & Divorcijs.
made

made 25 *H. 6.* and 3 and 4 *Ed. 6.* wherein no Canons are allow'd that be any ways *repugnant to the Laws of God or the Scripture, the King's Prerogative Royal, and the Statutes of this Land.* Thirty two Persons are to review the Canon Law, in which Review drawn up by Archbishop *Cranmer*, the innocent Person is permitted to marry again *according to Christ's Law and Concession.*

We have Examples of such Marriages in *H. 4. of France*, and *H. 8. of England*, Lord *Mounjoy*, Lord *Rich*, Bishop *Thornborough*, and divers others. And 'tis observable, That in the Case of the Marquis of *Norhampton*, 4 *Ed. 6.* who had been divorc'd for his Lady's Adultery, and married another before an Act of Parliament made concerning it, an Act which pass'd afterwards (only two Spiritual and two Temporal Lords dissenting) declares he had been at *Liberty by the Laws of God to marry, and did lawfully marry another*: Where the Act manifestly supposes that whatever has obtain'd for Law till that time, was void as being contrary to God's Law.

The most considerable Men of the Reform'd Churches, both at Home and Abroad, are of this Opinion.

Grotius quotes *Tertullian*, in whose Time it was lawful for the innocent Party to marry.

Lancelot Instit. Jur. Can. acknowledges that Divorce is a Dissolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, manifesteth, That Marriage after a Divorce is to be allow'd, and in that Opinion Dr. *Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: " Marriage, says he, cannot be dissolv'd by Men at their Pleasure, and for that Reason as 'tis consider'd simply and absolutely, 'tis rightly said to be indissoluble; because Marriage is not only a Civil but a Divine Conjunction, and is also of that Nature that it cannot be dissolv'd without Detriment to either Party; yet it is not so indissoluble but that it
" may

" may be diſſolv'd for a Cauſe which God ap-
 " proves as juſt, for the Indiffolvability was not
 " inſtituted for a Punishment, but for the Com-
 " fort of innocent Perſons, and it admits an Ex-
 " ception wherein God ceases to conjoin. By A-
 " dultery two are made not to remain one Fleſh.
 " Hence it is that a contagious Diſeaſe is not
 " a Cauſe of diſſolving Marriage. By *Adultery*
 " *the very Eſſence of the Contract is directly*
 " *violated; but the Contract ceaſing, the Bond*
 " *depending on the Contract, neceſſarily ceaſes.*
 " It is againſt all Reaſon that all Matrimonial
 " Duties ſhould be for ever taken away, yet
 " the Bond or Obligation to thoſe Duties
 " ſhould continue. The Words of our Lord,
 " *Mat. 5. 32. and 19. 9.* have no Diſtinction or
 " Limitation of the putting away, but ſimply and
 " abſolutely approve of putting away; therefore
 " they approve of putting away not partial, or to
 " a particular Purpoſe from Bed and Board, but
 " Total."

None are againſt the Reform'd Divines but
 Dr. *Howſon*, Mr. *Bunny*, and Dr. *Prideaux*.

Dr. *Howſon* was a profeſs'd Adverſary to Dr.
Reynolds, who was a great Maintainer of the
 Church of *England* againſt all the Points of Po-
 pery and particularly in this.

Dr. *Taylor*, Biſhop *Hall*, Dr. *Fulk*, are for ſe-
 cond Marriages; no Authors againſt them but the
 Council of *Trent*, and thoſe of the Church of
Rome; whoſe Credit is only ſav'd by thoſe of
 our Church who agree with them.

Upon the Difference of Explication between
 St. *Ambroſe*, *Origen* and St. *Auſtin*, a new kind
 of Divorce has been thought of *from Bed and*
Board; but this Divorce, or *Name of a Divorce*,
 was unknown to the *Jews* and antient *Chriſtians*.

I ſaid ſo much before at the firſt and ſecond
 Reading of this Bill, that I was in good Hopes to
 have had no farther Occaſion given me of answer-
 ing any Objections againſt it now; but ſeeing di-
 vers new Arguments have been ſtudied and fram'd

against it since that time, I shall now endeavour to satisfy and clear them all.

1. The first Argument against it is, That the Separation from Bed and Board doth not dissolve the Bond of Marriage. To which I must reply as I did before, That this is a Distinction without a Difference, newly invented by the Canonists and Schoolmen, and never heard of either in the Old or New Testament, nor in the times of the antient Fathers, who accounted the Separation from Bed and Board to be the Dissolution of the Bond itself.

2. The first Institution of Marriage that they may be one Flesh, is by Adultery dissolv'd when the Aulteress makes herself *one Flesh with another Man, and thereby dissolves the first Bond of her Marriage.*

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3. The Objection, that if the Bond be dissolv'd, and afterwards if the Man or Woman be reconciled, they must be married over again, is no necessary Consequence no more than 'tis in a Person baptiz'd who may break his Covenant and renounce his Baptism, and yet upon true Repentance be receiv'd into God's Favour by Virtue of the first Covenant without any new Baptism. Suppose a Witch, who they say makes a Compact with the Devil to renounce her Baptism, should afterwards by the Grace of God seriously and truly repent herself of the Wickedness; I do not believe that any body would take upon him to baptize her again: And if a Priest should renounce his Orders and turn *Turk*, and yet afterwards repent him and return into the Church, he need not be re-ordain'd a second Time. The Case will be the same in Marriage.

4. I said heretofore, That the Roman Doctors allow'd this Dissolution of the Bond, when the Man and Wife, even after the Consummation of Marriage, would transfer themselves into a Friery or Nunnery; but because it has been since doubted, that no Authority can be shew'd for this Particular, I shall here shew it out of the Old Constitutions of the Church of *England*.

“ And

“ And in the Caſe of Religion, that is the true
 “ Underſtanding, That, to wit, either of them
 “ betaking themſelves to Religion before Carnal
 “ Knowledge, the Bond of Marriage be diſſolv’d :
 “ But if both enter into Religion, and make ſo-
 “ lemn Profeſſion ; then ſuch Marriage is diſſolv’d
 “ even as to the Bond. ”

5. It hath alſo been ſaid, that if the Bill paſs,
 it will paſs againſt the Church of *England* ;
 which I confeſs I do not underſtand ; for the
 Church of *England* is within the Kingdom of
England ; and if the Laws of this Kingdom be
 for the Bill, and have declar’d it by the Aſſent of
 the King, Lords and Commons, as in the Caſe of
 the Marqueſs of *Northampton* was heretofore de-
 clar’d, in the Time of King Edward the ſixth ;
That by the Laws of God the innocent Party was
at Liberty to marry again ; certainly the Spi-
 ritual Lords as well as the Temporal and Com-
 mons are bound to admit it. And I know not why
 they ſhould be call’d the Church of *England* that
 join with the Council of *Trent*, and plead ſo
 much to uphold it, rather than others that join
 with all the Reform’d Churches, and plead againſt
 the Canon of the Church of *Rome*, which hath
 laid an Anathema upon us if we do not agree with
 them.

As to the ſuppos’d Inconveniencies that will
 follow upon marrying again.

1. More Inconveniencies will follow, if they be
 forbidden to marry again.

2. The Father would be in an uncertainty of
 the Children, if he ſhould retain the Adulterers.

3. There would be danger of poiſoning or kil-
 ling one another if no ſecond Marriage were al-
 low’d.

4. Where the Parties ſhould conſent to New
 Marriages for their own Luſts, the Magiſtrates
 have Power to over rule ſuch Practices.

* Prov. Will. Lyndewode five Conſt. Aug. fol. 94.
 Ver nullatenus ſeparentur.

5. If they be kept altogether by Divorce from Marrying, it would occasion the innocent Party to Sin.

The Objections of the Dutchess's Friends to these Proceedings.

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A little before the main Question about passing the Duke's Bill, the Dutchess's Agents handed about a Paper, wherein they endeavour'd to shew the Hardness of her Case; the first Part of which being already inserted in the beginning of these Proceedings, I shall give the Reader here only the latter Part of it.

The Dutchess thought herself under a Necessity of complying with all the Orders of the House of Peers; and accordingly, as well as she could, made her Defence, tho' less than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witnesses, many Contradictions appear'd; some whereof follow, as doth appear by the Depositions taken in Writing, and now remaining in the House of Peers.

For *Hauseur* the Foot-man swears the Dutchess was at the *Cock-pit* when and before he came to live with Sir *John Germaine*, and that he continu'd there 15 Days after, and that after the Dutchess left the *Cock-pit* she went to *Vaux Hall*.

*Vaness*e the Cook-Maid swears *Hauseur* came to Sir *John* when the Dutchess was at *Vaux-Hall*.

Hauseur swears that the 8th of *February* 92 he left Sir *John*'s Service, when the Trial was between the Duke and Dutchess in Parliament, and after liv'd privately six or eight Weeks, 'till he and *Vaness*e could get to *Holland*, and arrived there in *Easter* following.

And yet in another Place he swore he desir'd Leave to go, and afterwards, that he also went for *Holland* as soon as the Wind was fair.

But note, all the Evidence was clos'd, and order'd to be summ'd up the 9th of *February*, so that he needed not afterwards to have gone. And whereas he insinuates that he and *Vaness*e were secreted, and kept from being Witnesses.

Note, It doth no where appear that either he, or *Vaness*e, were ever thought on for Witnesses: *Hauseur* swears he return'd again to Sir *John* in the Summer

Summer 1692, being often ſent to by Sir *John*: Whereas *Bayly*, another of the Duke's Witneſſes ſwears, he did not return again to Sir *John* in two Years after he went away, *Bayly* the Witneſs being all that Time, and three Years before, a Servant in the Houſe.

Note alſo, That this very Summer, 92, to wit, in *Eaſter* Term, the Duke brought his Action againſt Sir *John*, which was try'd *Michaelmas* Term 92; at which Time it had been more likely if Sir *John* had believ'd he could have done him any harm, he ſhould have kept him in *Holland*, rather than have ſent for him over; eſpecially conſidering that this Fellow afterwards ſwears, Sir *John* ſwore in a Rage, this Fellow wou'd betray him.

Hauſeur being aſk'd who ſent for *Vaneſſe* over; he answer'd, that after he had promiſed the Duke and Lord *Howard* to ſpeak the Truth of what he knew, they deſir'd him if he met *Vaneſſe* to deſire her to come over, and ſpeak the Truth of what ſhe knew.

And being aſk'd how long after he met *Vaneſſe*, answer'd, about twelve Months ſince.

And being aſk'd when was the firſt Time he ſpoke to her about her coming over to ſpeak the Truth, answer'd, 'tis about a Year ſince.

And being aſk'd how long it was ſince they reſolv'd to come over, answer'd, twelve Months.

Vaneſſe being aſk'd, Whether ſhe was not ſent for from *Holland* to be a Witneſs? answer'd, ſhe knew nothing of it till eight or nine Weeks ago.

Vaneſſe ſwears ſhe was ſent away on Account of the Trial.

Whereas *Peacock*, *Hawkſworth*, and *Knigh*, three Servants of the Dutcheſſes's, ſwore the Dutcheſſes turn'd her away before the Trial, for keeping Company with *Dutch* Soldiers; and they do ſwear a new Cook-Maid there before the Trial.

Hauſeur ſwears, he had a Key of the Door going into the Park, and could come in when he would.

And yet owns he knew but two of the Servants, one whereof is long since dead.

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And also the Dutcheſs's Servants ſwear they never heard any Body had a Key; and that if any Key had been, they muſt have known of it. They alſo prove the ſhutting up, bolting, and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell; but came only to ſee a Country-Woman of his, and to carry Letters to *Holland*, and brought Answers back to her; but was not admitted beyond the Paſſage.

Hauſeur and *Vaneſſe* ſwear, they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-Bank*.

The Dutcheſs's Woman ſwore, ſhe has put the Dutcheſs to Bed, and taken her up, every Night and Morning, ſeveral Years, and never ſaw him in the Houſe. And two others ſwear, they were conſtantly in waiting, Night and Morning, and poſitively deny any Knowledge of any ſuch Thing; and ſay, they never ſaw *Hauſeur* there; and that *Vaneſſe* was never admitted up Stairs, ſhe was ſo dirty a Creature, much leſs to dreſs or undreſs the Dutcheſs, as ſhe pretended often to have done.

Vaneſſe ſwears, ſhe could not tell the Places ſhe has been at theſe fix Weeks laſt paſt. Whereas,

Mr. *May* and two other of the Duke's Servants ſwear ſhe has been fourteen Days in the Duke's own Houſe, with the full Liberry of the Houſe.

Vaneſſe being aſk'd, Whether ſhe ever told any Body of the Occaſion of her going away? ſhe ſwore, Yes; ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards aſk'd, Whether ſhe never diſcover'd that ſhe was ſent out of the Way? ſhe ſwore directly, No.

Theſe are ſome of the many plain Contradiſtions and Diſproofs of theſe Evidences, beſides the great Improbability in their own Nature, in ſeveral Things ſworn.

But

But it is alſo to be noted, that *Hauſeur* left Sir *John's* Service in a Diſguſt; and ſo 'tis prov'd by *Bayly*, another of the Duke's Witneſſes; and that what *Hauſeur* ſwore, could be nothing but Spight and Malice: Yea, 'tis prov'd on the Dutcheſs's Part, that he ſwore he would find a Way to be reveng'd of him, and that perhaps it might not be long fiſt: And Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depos'd very materially for the Dutcheſs, refus'd to appear, tho' often ſummon'd, being Perſons not in the Dutcheſs's Intereſt, or Power.

This *Hauſeur* has been out of Place ever ſince he left Sir *John's* Service, April 96, and is ſo ſtill, as he ſwears; and ſo in Conſequence likely to be neceſſitous.

Note alſo, That *Hauſeur* ſwears Sir *John* gave him ſeven Guineas to pay the Charges of himſelf, *Vaneſſe*, and another, which were order'd to be kept private till they could be ſhipp'd off; and alſo for their Paſſage into *Holland*, which was in Time from the 8th of *February* 92, till *Eaſter*, which does not look like a Bribe for a Secret of this Nature, being hardly ſufficient to maintain three People, and pay their Lodgings for two Months.

Hauſeur would be thought a mighty Confident, ſo as to have a Key to the Dutcheſs's Houſe, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the Houſe and the Dutcheſs's Bed-Chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainſcoted or hanged. And when he was ask'd which Way the Windows of the Bed-Chamber look'd, he trifled in that Queſtion, and concluded, he could ſee the Water, but was afraid to go near the Window, for fear of being diſcover'd; and yet had no Scruple of coming into the Houſe with his Key at any Time. Theſe Things being obſerv'd, it muſt be conſider'd, that the Facts now in Effect charg'd againſt the Dutcheſs, are ſuggeſted to be done many Years ſince; and were debated and conſider'd before the Peers,

before the Rejection of the two first Bills; and long before the Agreement for putting an End to all Controversies and Debates. Now 'tis very hard to put the Dutchess to Account again for those very Facts, considering that after eight or nine Years many People are dead, others dispers'd, and not in a little Time to be found out, and Circumstances of Times and Places (which in the Nature of all these Cases is almost all that is left to discover a Falshy) forgot.

The Dutchess is also under the unavoidable Necessity of proving a Negative against down-right Swearing, and that without any Matter introductory; and also by two mean Servants, the one turn'd out of her Place for keeping Company with Foot Soldiers, and the other leaving his Place in Disgust, because he could not have the Play-Money.

Masters are already too much in the Power of their Servants, and if they Charge their Masters with Adultery, Felony, and even Treason, it is not easily in the Power of the Master to defend himself against down-right Swearing; Servants having those Opportunities of the Knowledge of Times and Places, and Company, which cannot be deny'd, or avoided, and which others have not; whereupon they may frame and build false Evidence; and many Times are of ill Principles, and desperate Fortunes, and of Tempers very revengeful; so that whoever turns away a Servant, he is in his Power for his Estate, Honour, and even Life itself; and therefore for the Safety and Freedom of Families in other Countries, they are not permitted to be Evidence against their Masters in any Matter Criminal whatsoever.

Note also, that the Dutchess thinks, she as an *English* Subject has, by *Magna Charta*, the same Right to a Trial in the legal and ordinary Way of Justice, as the rest of the King's Subjects; especially considering that there never yet was in *England* one Precedent of a Bill exhibited in Parliament to dissolve a Marriage at the first Instance, without any previous Proceedings in the Ecclesiastical

cal Courts; (which in theſe Caſes is the Law of the Land) and not above 5 or 6 Bills in above 600 Years ever paſſ'd to diſſolve Marriages, or make ſecond Marriages good; even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Caſes generally where the Huſbands were without any Recrimination.

No Impediment appears why the Duke ſhould not have endeavour'd a Divorce at Law before he had attempted a Bill to diſſolve the Marriage, for any Application to the Legiſlature for the Trial of Matters of private Right is improper, becauſe there are proper Judicatures that give that Remedy the Law allows.

To aſk any Thing of the Legiſlature in private Cauſes between Party and Party beyond what the known Laws in Force give, ſeems to be improper; becauſe,

1. It is to make a Law in one Perſon's Caſe, which is not the Law in another's. Page 593.

2. It is to retroſpect Actions, and after the Fact to augment or alter the Penalty. Our Laws are certain and known, the Perſons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law, and the Application to the Legiſlature takes away all the Right of Form and Charging: Whereas a Certainty in Time to Answer, and Exceptions to Witneſſes, and other legal Defences of the Fact, cannot be deny'd the meanest Subject.

The Conſequence that ſhort and ſummary Ways of Proceedings may have on the Settlements of Eſtates and Families may be very dangerous; and tho' the Duke of *Norfolk's* Bill paſſ'd the Houſe of Peers, yet a great Number of the Peers, both Spiritual and Temporal, enter'd their Proteſts againſt its paſſing, and their Reaſons for it.

It ought to be no Prejudice to the Dutcheſs, that the next Heir preſumptive to the Duke doth not yet appear to be a Proteſtant; becauſe when a
Bill

Proceedings in Parl. between the Duke

Bill which hath lately pass'd both Houses is become a Law, it is not likely that Noble Family will be without a Protestant at the Head of it.

If any of the Witnesses formerly examined on the Bill in 1691 be now again produc'd, it is humbly apprehended, that as the Validity of their Testimony they then gave was totally overthrown by a greater Number of Witnesses, so it will be again, tho' under the Disadvantage of the great Distance of Time.

On *Tuesday* the 19th of *March* 1699, being the Day appointed for reading the Bill for dissolving the Marriage of the Duke of *Norfolk* the second time, and hearing the Council on both sides thereupon : Before the Council were called in, to prevent the Inconvenience of Peoples crowding into the House, an Order was made, That none but the Council, Solicitors and Parties should be called in, and that the Witnesses should have notice to attend without, ready to be called in when the House, thought fit. It was intimated also, that if the Duke and Dutchess should come into the House they should be accommodated with Chairs. This being a Respect shewn to the Nobility when they come into the House.

The Council, Solicitors and Parties being call'd, the Bill was first read, and then the Lady Dutchess's Petition (already recited.)

The Council for the
Dutchess were.

The Council for the
Duke.

The Council
on both Sides.

Sir *Thomas Powis*.
M. *Dodd*.
Dr. *Pinsfold*.

Mr. Serjeant *Wright*.
Mr. *Norrbey*.
Mr. *Atwood* and
Dr. *Oldish*.

Mr. Speaker having intimated, that the House would first hear the Council for the Lady Dutchess, according to the Prayer of her Petition,

Sir *T. Powis*
for the Dut-
chess.

Sir *Thomas Powis*, one of her Grace's Council, observed, That this Bill, in the manner it was brought before them, was the first of the kind
that

that was ever attempted in that Houſe; that another indeed of the ſame nature had been attempted twice in the other Houſe ſeveral Years ago, and was as often rejected: and he hoped they would take Notice, that this was a Bill of Divorce in Parliament, in the firſt Inſtance, without a previous Proſecution to examine the Fact in any of the ordinary Courts that had Authority in theſe Matters.

That this was a Bill not only to divorce the Dutcheſs upon a very ſhort Warning, who had been married three and twenty Years, but to render her infamous to all Poſterity by Act of Parliament, and at the ſame time took from her the legal Trial of the Fact, which ſhe was ſurely entitled to, as well as the meaneſt Subject: Nor was there any reaſon aſſigned, why his Grace had not proceeded in the ordinary Courſe. That it was nothing more but a Suit between Party and Party, merely a Cauſe matrimonial between Husband and Wife, begun originally in the Houſe of Peers: And as the beginning of Cauſes in that Houſe between Party and Party had hitherto been ſtrongly oppoſed, becauſe it deprived the Subject of his legal Defence, he hoped it would always be ſo.

That this was a ſummary Proceeding with a witneſs; being begun the 16th of *February*, and but a Week's Time given the Party accuſed to be heard, and tho' they might with reaſon enough, perhaps find fault with the tedious Proceedings in ſome Courts; yet a ſummary Proceeding without due Warning, or any certain way of making a Defence by any known Rules, without Oath (as here) and without appeal, and being for all that a Perſon had in the World, was ſuch a ſummary Way as was very terrible.

In Kingdoms where the Government is arbitrary the Proceedings are uſually in a ſummary Way, and if they were in a Place where Judges were infallible, where there were no falſe Witneſſes, and where Truth could be diſcovered in an Inſtant, a ſummary Way would be the beſt; but

but since Men were fallible, since there was Passion and Partiality in the World, since notorious Perjuries were frequently detected, some things difficult to be disclosed, and required time to examine: From thence it proceeded, that there were settled Courses for determining all Differences between Party and Party in *England*, and known Rules for relieving Persons against ill Judgments that might be obtained.

That the Example in this Case would be of mighty Consequence to all Parents, who perhaps might make hard Shifts to give their Daughters Portions, and think they had made Provision for them and their Children. If their Daughters should be sent home to them upon a Fortnight's warning, and Witnesses examined against them, without their knowing the Places of their abode. This was too great a Temptation to be laid in the way of such Men as might grow weary of their Wives: Desire of a better Fortune, or a Change, and a thousand other Motives there might be to revive old Quarrels, if they should set such a Precedent for divorcing People in this summary Way.

A Bill in Parliament to divorce a Woman without a legal Trial was the same thing, as a Bill of Attainder against a Man for Treason; one forfeits the Estate, corrupts the Blood, and takes away his Life, and the other does little less; for the Bill was to forfeit her Jointure, defame her Person, corrupt her Reputation, and tho' it left her Life, it was left with Infamy worse than Death. We have a happy Constitution if we can keep it; every Man can call his Wife his own, and his Estate his own, because it can't be taken away without a legal Trial; but if we go into those extraordinary Courses when the Courts of Law are open, without any previous Examinations of the Case, he did not know where it would end.

Magna Charta was not to be forgotten, where so much Care was taken for preserving Property and the Right of Trials: *Quod nullus destruat, nec super eum ibimus nec super eum mittemus nisi per legale Judicium parium suorum vel per legem terre.*

terre. The Eccleſiaſtical Law was the *Lex terra* in this Caſe; and if that was taken away without Reason, Why might not the Law in any other Caſe?

In time of publick Difficulties indeed extraordinary Laws have been made, grounded on extraordinary Reasons; but in a time of full Peace, when Matters might be decided according to the Laws of the Land, he could ſee no Reason for this Proceeding.

There have not been fix Inſtances of this Kind in fix hundred Years; and in thoſe few there have been, they proceeded in another Manner than they have done in this. 'Tis true, where Perſons have had a fair Trial in a proper Court, and Sentence pronounced according to the Law of the Land, there are ſome Inſtances where an Act of Parliament has been obtain'd to ſtrengthen the Sentence, and carry it farther than the Eccleſiaſtical Court will allow, even to the diſſolving the Marriage, and enabling the innocent Party to marry again: But all thoſe Acts are founded on the Sentence of thoſe Courts, and recite thoſe Sentences as an Inducement for paſſing thoſe Acts.

The firſt Caſe he cited was, that of the Marquis of Northampton, 5 E. 6. He was married to a Daughter of the Earl of *Effex*, and ſhe elop'd from him, and a Divorce was obtain'd in the Eccleſiaſtical Court: Whereupon the Marquis married a Daughter of the Lord *Cobham*, and four Years after he was married, procur'd an Act of Parliament for ratifying the ſecond Marriage, in which the Sentence of Divorce is recited.

Inſtances of
Acts ena-
bling People
Divorc'd to
marry again.
Pag. 595.

The next was the Caſe of the Lord *Roff*, afterwards Earl of *Rutland*, where the Notoriety of the Fact, perhaps, was as great as is pretended in this Caſe; and here the Act follow'd a Divorce in the Eccleſiaſtical Court, and was obtain'd with ſuch Difficulty, that it was four Years in paſſing, (*Viz.*) from the Year 66 to 70.

The third was the Caſe of Mr. *Lukener*, within our Memory, who had been groſſly abus'd by his Wife, by Elopement and open Adultery: But here the

Proceedings in Parl. between the Duke

the Act went no farther than to disable the Children born, while she liv'd in open Adultery; and this Act also recites a Sentence of Divorce.

There was indeed a Case that happen'd not long ago, (that of Mrs. *Wharton*) where the Lady was taken away by Force, and pretended to be marry'd; and an Act of Parliament came afterwards, and declar'd that Marriage void: but there was a Proceeding at Law with a Witness; for the Person who put the Force upon her, was actually try'd and executed; and this Law was only declaratory, to satisfy all Persons that might be affected by it, that the Marriage was absolutely Void.

The last he mention'd was the Case of the Earl of *Macclesfield*; but here he observes, there were previous Proceedings in the Ecclesiastical Court. There was a Libel exhibited against the Lady, Witnesses examin'd against her, and a regular Prosecution, in order to a Sentence of Excommunication. And then the Earl petition'd the House of Peers, setting forth, that there had been such a Proceeding, and that she stood in Contempt, having been prosecuted as far as that Court could go; and in all Cases he had heard of a Divorce by Act of Parliament, there had been previous Proceedings in the Ecclesiastical Court. But now the first Application was to that Place, which in all these Instances was, and he thought ought to be, the last Resort: This Method might not please the Duke indeed, his Grace they knew was in Haste, and for cutting the Knot asunder by the Legislative Power; but he hop'd from these Precedents they would think it more reasonable it should be first untied, or at least loosened, by a judicial Proceeding; for he did not see how in Justice, the Parliament could deny the like Remedy, in the like Case, to any other, if they pass'd this Act: That Nothing guarded them from infinite Applications of this Nature, but the requiring Persons to take the ordinary Course first, and come round about to the Parliament as the last Remedy, to carry the Sentence, perhaps, further than the Ecclesiastical Court could do; but if they could
come

come directly thither, their Lobby would be crowded with Petitioners of the like Nature, to the Obſtruction of all other Buſineſs; A Committee for Adultery would have full Employment.

If a poor Man upon this Precedent ſhould apply to them it might look ſtrange; but yet in Juſtice there was no reſpect of Perſons. The Law in *England* is *Unum Pondus & Una Meſura*: And if this ſhould be done in caſe of a Great Rich Man and not for a Poor Man, they might well ſay, *That our Laws are like the Spider's Web, which only hold the leſſer Inſects*; and if this be one of the Privileges of Peerage, it was never thought on before.

It has been objected in another Place indeed, *To what Purpoſe ſhould they apply to the Eccleſiaſtical Court*, which could not Divorce a *Vinculo*. This might be a Reaſon for their coming to the Parliament afterwards, he allow'd; but was no Reaſon for their coming thither firſt, unleſs they would ſay, that all Cauſes ought to be begun in Parliament.

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He obſerv'd further, that this Bill was general, not reſtrain'd to Time or Place, Deſcription or Circumſtances relating to the Fact: Whereas the Duke, who complains of this Matter, as if ſome Miſfortune had happen'd to him in *April 1694*, by the Advice of his Council, with his Friends about him, after a long Time of Agitation, had enter'd into Articles of Agreement with his Wife the Dutcheſs, wherein every Thing was ſettled to his Grace's Satisfaction: He had reap'd the Benefit of theſe Articles by receiving a great Sum of Money; and the Dutcheſs had parted with her Intereſt in that Noble Manor of *Sheffield*. His Grace had all that on his Part he was to have, and had executed abundance of Deeds in purſuance of that Agreement: And now after all, upon a Proſpect of another advantageous Marriage perhaps, moved the Parliament to give him Liberty to depart from ſo ſolemn an Agreement. In what a Condition are People that have purchaſed their Peace, as the Dutcheſs has, if he may go back beyond this? for the Bill has no Reſtraint.

Surely

Surely all Reconciliation between Man and Wife, all Acts towards them, and all Acts of Kindness are to be favour'd. Matters of Divorce are of an Odious Nature, and not to be encourag'd after such a composure of Differences. There are Instances of some who have taken their Wives again, and liv'd comfortably afterwards. To what End are all Acts of Pardon and Limitation, but that People should not be charg'd with Offences at such a distance of Time as it is impossible for them to defend their Actions: The Law hath appointed a limited Time, beyond which Persons shall not go back; and this the Duke had done by Articles, which they look'd upon to be conclusive before God and Man, and hop'd that this Cause that had been precipitated here out of Time, should be remitted to its proper Place, where her Grace would give the Duke a Meeting, if they were not reconciled before that Time.

Mr. *Dod* for
the Dutchess.

Mr. *Dodd*, another of her Grace's Council, observ'd, that this was a Bill to dissolve a Marriage after twenty-three Years Continuance, without so many Days Notice as the Marriage had continued Years, to serve the Purpose of one particular Person: That it was a Law after the Fact committed, whereas the Law ought to precede the Fact: That it was a Bill from the Lords, and he did not know but in a little Time the Lords would prescribe to it. There was not one Bill of this Nature for a Commoner, unless in the Lord *Ross*'s Case, who was of a Noble Family: That it was not pretended by this Bill the Dutchess had any spurious Issue, which was a material Circumstance. That these Bills were not to be made Use of but upon extraordinary Occasion, and the utmost Extremity. It was the first Instance of this Nature where there had been no previous Proceedings in any other Court: If the Ecclesiastical Courts had Jurisdiction in any one Thing, it was in Case of Matrimony, and there the Dutchess would be allow'd to make her Defence, as well by Recrimination as by Examination of Witnesses; that she might have Appeal'd to a superiour Court, and from

from thence to the Delegates : Theſe were proper Defences that the Party might not be ſurpriz'd, and if injur'd, might be reliev'd in another Place. Such Proceedings he thought were neceſſary to go before a Bill of this Nature, that the Fact might be Evident ; and then he ſhould not have opened his Mouth againſt it.

By the ſame Reaſon that a Bill was brought in to diſſolve a Marriage, they might in a little Time have a Bill to marry People, which might be thought a more expeditious Way in Caſe of Contracts, than the Proceedings in the Eccleſiaſtical Courts : He hop'd they would be tender of making a Precedent. He did not know of any Bill before this to Conviſt a Woman of a ſuppos'd Crime : They had always left theſe Things to the Determination of the Law in the ordinary Courſe ; and he thought it ought the rather to be ſo in this Caſe, becauſe there was no Pretence of a ſtop being put to the Ordinary Proceedings ; no Abſence of Witneſſes ; no Incapacity ; but his Grace might proceed there againſt the Lady ; and there ſhe would have her proper Defence, and till then there was no Crime to judge upon ; and therefore he hop'd they would Rejeſt the Bill.

Doctor *Pinfold*, who was alſo retain'd by the Dutcheſs ſaid, that the Eccleſiaſtical Law was as much the Law of *England* as any other : That this Bill being to diſſolve the Bond of Marriage, and give leave to marry again, he deſir'd to ſhew what our Eccleſiaſtical Conſtitutions were in that Caſe, and that thoſe Conſtitutions were founded on the Canons and Decrees of Council.

The Caſes where the Bond of Marriage was to be diſſolv'd, were but few, and theſe aroſe before Marriage, *Viz.* In the Caſes of Precontract, Nonage, or Conſanguinity. There the Bond was broken by the Sentence of the Judge, and the Perſon had Liberty to marry again ; but for what happen'd afterwards, whether it were the Caſe of Adultery, or any Thing elſe, the Eccleſiaſtical Law had been very careful not to diſſolve the Marriage.

By the 48th Canon, If any Layman put away his Wife, and married another, he was to be excommunicated: In the Council of *Arles* held *Ann.* 314, it was decreed, That if a Man took his Wife in Adultery, he should be forbidden to marry; Counsel should be given him not to marry while she liv'd, tho' she was an Adulteress. In the *Neopolitan* Council held in 402, it was decreed, That in Case of a Divorce, the Parties should not marry again, but remain unmarried, or be reconcil'd. In the *African* Council, *Can.* 102, it was decreed, That the Parties divorc'd should remain unmarried. This was the Sense of the antient Canons and Councils, and these were receiv'd into the *English* Ecclesiastical Constitution. In the 15th Year of Queen *Elizabeth*, in the Chapter of Divorces, it is said, That upon a Sentence of Divorce, there must be an Admonition and a Prohibition, that the Party shall not marry again. And in 1602, in King *James's* Reign, there was a further Provision, That the Parties should give Bond they would not marry again. This was certainly our Ecclesiastical Constitution, and founded on the Sense of antient Canons.

That had the Dutcheſs been allow'd that Trial, which of Common Right was due to the meanest Subject, she would have had the Advantage of her Challenges, which she could not have here. There the Witnesses must give an Account of themselves; which had not been done by any of them. The Lady might have offer'd Exceptions to the Witnesses, and have had a Commission into *Holland*, to have examin'd how these Witnesses behav'd themselves, and whether they were to be credited: There she would have had Liberty to give an Account how this Design began; (for it seems to have began a Year and half ago) and there she would have had the Advantage of that thorough Reconciliation, made in the Year 1694; and the Advantage of Recrimination, from which she is debarr'd by this Bill; for by the Law of Divorces, if she can prove the same Thing against her Husband, then Faults must be set one against the

the other. and he can't have the Advantage of his Prayer.

Mr. Serjeant *Wright* being of Counſel for the Duke ſaid, that his Grace came there as a Suppliant for that Bill, for Redreſs againſt the higheſt Injury that could be offer'd; the Abufe of his Marriage-Bed, for which no other Court could afford him Relief. The Doctör who ſpoke laſt had admitted, that there could be no Divorce *a Vinculo Matrimonii* in their Courts: And to ſend them thither for Relief, where they told them before-hand they would have none, was in Effect to tell them, they ſhould have none at all. That the Reaſon on which the Bill was founded, was the Adulterous Converſation of the Dutcheſs; not for one ſingle Act, but a continual Series of the like Acts for many Years, which was begun in 1687, and carried on to the latter End of 95.

Mr. Serjeant
Wright for
the Duke.

They deny'd that it was the firſt Bill of this Kind, for the Earl of *Macclesfield's* was, to all Intents and Purpoſes the ſame: 'Twas true, the Earl of *Macclesfield* had been firſt in the Spiritual Court; but 'twas as true, that he came into Parliament before any Sentence paſſ'd in the Spiritual Court; and to what Purpoſe was his going thither; if he did not ſtay for the Determination of that Court, if the Determination of that Court was to have any Weight with them? That they did not come there for any Thing the Spiritual Court could grant them; they could only make a Separation *a Menſa & Thoro*, but the Bond of Marriage was to be continued ſtill; and what was this but to puniſh the Innocent inſtead of the Guilty? What would the Dutcheſs deſire more, than to be ſeparated from the Bed and Board of her Husband, and to be left at Liberty to accompany Sir *John Germaine*? They came therefore to the Parliament to diſſolve this Marriage, for that which was allow'd by many learned Men a juſtifiable Reaſon; for *Adultery committed by the Wife*. It was expreſſly ſaid, *That a Man ſhould not put away his Wife, except in Caſe of Fornication*; which Text plainly allow'd, that for *Fornication* a Man might put away his Wife. He agreed, that in the Mar-

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quis of Northampton's Case, the Act did recite the Proceedings in the Spiritual Court, but that Case was stronger than this; for there the Marquis married in the Teeth of their Canon Law, and came afterwards into Parliament to make the Marriage good; and there the Divorce was no Ingredient towards passing the Bill, but the Parliament enacted the Marriage to be lawful. And in the Lord Ros's Case there was no mention of a Divorce; the Witnesses were examin'd again in both Houses, and the Children were bastardiz'd, on proving that the Lord Ros and his Lady had not lain together for many Years, and that she had kept Company with others; so that the Parliament did not found the Bill on what had been done upon the Divorce: In the Lord Macclesfield's Case, the Proceedings in the Spiritual Court were not recited in the Bill, but only an express down-right Charge of Adultery: We insisted on the other Side indeed, that the Parliament could not proceed in it, because this was to take upon them an Original Jurisdiction; but were answer'd then by a learned Gentleman against the Bill, (Sir Thomas Powis) that it was in Vain to go into the Spiritual Courts, for they could not give the Remedy that might reasonably be expected. I shall mention a Case or two where there have been no Proceedings in the Spiritual Court; one of them the Case of Mrs. Knight, who was married *infra Annos nobiles*: Every one knew that a Marriage *infra Annos nobiles* was a good Marriage; and if the Woman was above nine Years of Age, she should be endow'd: And yet for some irregular Proceedings, without going into the Spiritual Court, the Parliament dissolv'd that Marriage, and enacted, that she should not marry till a certain Age.

To what purpose should we Travel 3 or 4 Years in the Spiritual Court, as they would have us, before we come into Parliament? This House would not let these Depositions be read, but would examine the Witnesses themselves.

They say this is a very summary Way of Proceeding; but a Bill was brought in several Years ago, and the

the Witneſſes were ſent out of the Way while the Matter was under Examination, by the Dutcheſs and Sir *John Germaine* : And he hop'd a Proceeding of this Nature ſhould never be baffled, by keeping the Evidence out of the Way : No body could imagine the Parliament would paſs the Bill, without a due Examination of Witneſſes, and legal Proof of the Fact ; and then, what Matter was it, Whether the Proof was made here, or in ſome inferiour Court ?

The Doctor obſerves, that the Woman might recriminate ; and if the Husband alſo was Guilty, they muſt ſet one Fault againſt the other ; but he did not think the Injury to Families was equal : A Man by his Folly of this Kind, brought no ſpurious Iſſue into the Family ; whereas the Woman depriv'd the Husband of any legitimate Iſſue.

As to the Articles of Agreement that were mention'd, they did not Authorize the Dutcheſs to uſe her Body as ſhe pleas'd ; there was no Agreement ſhe ſhould live according to her own Pleaſure : She was to have the Uſe of the Houſhold Goods and Servants, and to live where ſhe pleas'd ; but this would not juſtify the Liberties ſhe had taken.

'Tis ſaid theſe were Matters of a long ſtanding ; and ſo indeed they were, for they ſhould prove this Scene of Adultery for eight Years ſucceſſively : That the Servants who were privy to it, were ſent to *Holland* ; but no ſooner was the Bill baffled, but the Man was ſent for again, and the ſame Converſation continued between the Dutcheſs and Sir *John Germaine* as before he left *England*, to the Year 1692, and to the Year 1695 ; only they were ſomething more Cautious, and People were not admitted ſo familiarly to ſee them in Bed together as before.

As to the Statutes of Limitations, that was made to put an End to frivolous and vexatious Suits, after a long diſtance of Time : Was there the like Reason that a Man ſhould not complain when he had receiv'd the greateſt Injury that could be done him : They were pleas'd to recommend it to the

Duke, to go into the Ecclesiastical Court till next Sessions ; but since he had such good Reasons to come here, he hop'd if they prov'd the Fact, they would not dismiss a Complaint of that Nature without suitable Relief.

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Mr. Northey
for the Duke.

Mr. *Northey* being also Council for the Duke said, That there had been three Witnesses examined upon Oath in the House of Peers before the Bill pass'd there ; and that the Witnesses that had been produc'd on the other Side, were so far from contradicting theirs, that they really confirm'd them.

He observ'd, that the learned Doctor would have the Canon Law govern here as it did in their Courts, but that this Bill was to relieve against the Canon Law ; and as to the Argument that the Witnesses could not be upon Oath here, he thought that would not prevail in this Place. As to that Objection, that these Proceedings were in a summary Way, the same might be objected to all Proceedings before a Jury ; they had no Notice there what Witnesses would be produc'd.

In the Earl of *Northampton's* Case, the Bill was not to confirm the Sentence of the Ecclesiastical Court, or enable them to marry, but to deliver them out of the Hands of that Courts that said it was not lawful in that case to marry, for they were married before. And in the Lord *Macclesfield's* and Lord *Ross's* Cases there was no Regard had to the Proceedings in the Ecclesiastical Court : 'Twas true, when they came before the Parliament without such a previous Proceeding, they came under that Disadvantage, that they would expect plainer Proof : And they should make the Facts so plain, that it could never be denied. That after the Duke had miscarried in his former Bills, by the Witnesses being spirited away, the Dutches's submitted to a Separation by Articles, which was all the Duke could have pretended to obtain by the Ecclesiastical Law. And they follow'd her upon that, and came there to enforce that Separation, and hop'd the Duke should be deliver'd from this Wife, and empower'd to marry again. They thought no body could be hurt by a Precedent that

that deliver'd them from a Law which was put upon us in the Days of Popery.

Doctor *Oldiſh* being retain'd for the Duke ſaid, Dr. *Oldiſh* for the Duke. he obſerv'd the great Objection againſt the paſſing the Bill, was, That Witneſſes had not been examin'd in a proper Court; and it was true, generally ſpeaking, it ought to be ſo. But here was a great Exception to that Rule, which was *the Notoriety of the Fact*, and in that Caſe they might begin with Execution. When the Dutcheſs formerly came to give her Answer in the Houſe of Peers, ſhe declared, that in the Year 83; or thereabouts, ſhe went out of *England*, and return'd about the time of the Revolution. And it plainly appear'd, beyond all Queſtion, that ſhe was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Keemer*, who went by the Name of *Goodman*; and beſides this, there were Witneſſes that ſpoke to ſeveral Facts. They had that which amounted to a Demonſtration.

As to the Canons that prohibited a Divorce *a Vinculo*, it was an Eccleſiaſtical Conſtitution that was againſt the Law of God; for our Saviour ſaying that a Man ſhall not put away his Wife, except in caſe of Fornication, it was plain that for Fornication he might.

It was inſiſted indeed, that there had been a Reconciliation between the Duke and Dutcheſs, and that a Reconciliation ſhould drown all Things before that time. But then the Law takes Notice in caſe of a Relapſe that did *recrudescere*, rubb'd upon the old Sore, and then that which was before laid aſleep, was brought upon the Stage again, and would return with greater Vengeance; and they had evident Proof of her living in the ſame manner ſince, as ſhe had done before.

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Sir *Thomas Powis* reply'd, That the Caſe of Sir *Tho. Powis* Mr. *Knight*, which had been mentioned, was the replies. Caſe of an Infant, pretended to be married *Infra Annos nubile*, which being no Marriage, there could be no Divorce, the Marriage was only declared void. And the other Caſe of Mrs. *Whar-*

ton was no Marriage neither, for Marriage must be by Consent, and that was a Force, and consequently there could be no Divorce there; and the other Cases mentioned were as little to their Purpose.

As to what had been urged, that the Crime did not seem equal between the one and the other Party, and therefore the Doctrine of Recrimination had been ridicul'd, he apprehended the Doctor to be right in that Matter; for it would be hard if a Man should marry a young Woman, and give her an ill Example in his own Family, (he did not say it was this Case) and bring her acquainted with loose and ill Company, and by his Example or Provocation lead her into the same Offence: Would that Man deserve to be rewarded with a new Wife and another Portion, because his first Wife had only follow'd his Example? And if a Man brought no base Issue into the Family, it often happen'd that those who stray'd, brought home that to their Wives which would stick by them longer than their Children.

It was never pretended that the Articles would justify her living in Adultery, but they were a sufficient Ground for her living separately, and so they used them: They used them likewise as an Act of total Oblivion and Remission of any Thing that happened before that Time, and to such Purposes he hop'd they should be sacred.

And on the whole Matter, had the Council on the other side said one thing but what tended to bring all Causes of Adultery before them, had they distinguish'd this Case from that of any other Person; and if they had not, he did not see how any but Fools should from thence forward go into the Ecclesiastical Courts for Relief; for says Serjeant *Wright*, they cannot give them a final Relief, and enable a Person to marry again. *But here is a Relief to be had worth a Man's having:* But he hop'd they should have the Benefit of the Law, till they thought fit to alter it; and then they would erect some Judicature where the People might have their Trial. The Argument went too far there-

therefore, or it argued nothing; for if there was any Thing in it, it tended to taking away the Proceedings of thoſe Courts totally. It was obſervable what uſe had been made of the laſt Precedent of the Lord *Maccleſfield*, who proceeded in the Spiritual Court to an Excommunication: From whence they argued, that the Parliament might proceed Originally in this Caſe: When was the Time to make a Stand but in the firſt Caſe? then no Man could complain of an Injury. But if they granted the Duke this, they could not in Juſtice deny it to any other who ſhould ſtand in need of it.

Mr. *Dodd* obſerv'd, That the Gentlemen on Page 601. the other Side had cited our Saviour's Words, *That Mr. Dodd no Man ſhould put away his Wife except for Fornication.* But they could not ſhew a Text where our Saviour ſays, the Man might marry again, tho' he might put away his Wife. And as to what had been ſaid, that where the Faſt was notorious they might order Execution immediately; this was a ſtrange Doctrin to our *Engliſh* Conſtitution. Would they hang a Man firſt, and try him afterwards; let the Faſt be never ſo notorious, it was the Right of all the People of *England* to have a legal Trial, and he hop'd they would not interpoſe till there had been a regular Trial in another Place.

Then Sir Thomas Powis offer'd to read the Articles, but it was not permitted.

Monday the 25th of March, 1700.

The Houſe having reſolv'd themſelves into a Committee of the whole Houſe, Sir *Rowland Gwyne* took the Chair, and the Council and Solicitors were call'd in. Then Mr. *Northey*, Council for the Duke, open'd the Evidence, which being the ſame as above, I ſhall only take Notice of his Remarks upon it.

He ſaid the Evidence would make out the Faſt Mr. *Northey* as plain as poſſible for a matter of that kind to be prov'd; but in the Nature of the Thing, there Evidence were

were but a few Persons to be entrusted with it, and those were generally Servants who attended on the Dutchess's Person, and on Sir *John Germaine*. He hop'd it would be no Objection that they were Servants, for that were to say they should prove the Fact, but should have no Witnesses, for these were Facts that could not be prov'd but by such as were concern'd with the Dutchess: That the two principal Witnesses were Foreigners and *Dutch* People, and it was reasonable enough to expect Foreign Witnesses, when an *English* Dutchess had a Foreign Gallant. They were such as he thought fit to entrust about her.

Page 603.

That Mr. *Bayley* was a Servant of Sir *John Germain's* and came into *Hofier's* Place when he was gone beyond Sea. He was an unwilling Witness because he had been preferr'd by Sir *John Germain*; and yet when he was upon his Oath in the House of Lords, he gave an Account that while he was in Sir *John Germain's* Service, notwithstanding that publick Reproach in 1695, and 1696, the Dutchess frequently came to Sir *John Germain's* House with one *Keemer*, whom she had great Confidence in, and that when his Master lay from Home, he carried his Linnen to *Keemer* who was in the Dutchess's Service, or *Keemer* came to him for it; and after the Dutchess had been accus'd in the House of Lords with such a Familiarity, any Evidence of a Conversation between them afterwards was as much as a Thousand Witnesses; for no Woman that had valued her Reputation, having been accused as she was, would have had any Conversation with Sir *John Germaine* afterwards.

Mr. *Atwood's*
Remarks on
the Evidence.

Mr. *Atwood*, Council for the Duke, observ'd farther, that the two Witnesses *Hofier* and *Vanessé* did depose that *Susannah Barrington* was privy to this adulterous Conversation, and that she was withdrawn since this Bill was depending in the House of Lords: It was prov'd also, that Mr. *Daniel Germaine* and Mr. *Brian's* Wife, who were privy to the same Conversation, were in *England* lately.

Then

Then the Witneſſes were called in, but their Depoſitions are not given, as in the Folio, becauſe it is ſaid to be the ſame with that already taken before the Lords, except that of *Anne Read's*, which was new.

Anne Read depoſ'd, that in *April* 1692, ſoon after the Duke's Bill had been rejected in the Houſe of Lords, ſhe ſaw the Dutcheſs of Norfolk go in a Chair to Sir *John's* Houſe; and that the Door being open'd, ſhe went into the Houſe with her Mask off: That within a Twelve Month laſt paſt, or thereabouts, ſhe followed him to the Dutcheſs's Houſe about three of the Clock in the Afternoon, and that ſhe did not ſee him come out.

Anne Read's
Evidence.

The Witneſſes being examined on the Behalf of the Duke of Norfolk, the Dutcheſs's Council were call'd upon to proceed in her Defence.

Sir *Thomas Powis* ſaid, he was at a Loſs, and under ſome kind of Surprize, to be call'd upon ſo ſuddenly to make their Defence. He hop'd ſince they were pleaſed to take that Caſe out of the uſual Way of Trials, and to try it in the firſt Inſtance, that they ſhould have time to make their Defence. That ſix Hours had already been ſpent in the Examination of the Witneſſes, and they had given ſuch a variety of Answers, that it afforded a great deal to be ſaid to it. That they had alſo a great many Witneſſes to examine. They had a Week's Time allow'd them in the Houſe of Lords, but they did not expect that here; that was no Rule. But while they were at the Bar, a Perſon had given them Intelligence on ſight of that Cook-Maid, that ſhe was turn'd away for being a common Thief in *Holland*, and therefore they ſaw how neceſſary it was that Time ſhould be allow'd, and they could not make their Defence then.

Sir *T. Powis*
moves for
Time to
make their
Defence.

The Committee inſiſting however that they ſhould make their Defence immediately, Sir *Tho. Powis* obſerv'd, That the Evidence given before the Committee, was very different from that given before the Lords, and offer'd to produce the Examinations of Witneſſes before that Houſe: But they

The Council they were not suffered to be read ; but the Council were acquainted, That if they had any Witnesses *Viva voca* to encounter their Evidence, they might produce them.

Whereupon Sir *Tho. Powis* said, By this Resolution they were depriv'd of that Defence which he thought they would have made for her Grace.

for the
Dutchess not
suffered to
Read the Ex-
aminations in
the H. of
Lords.

Mr. *Atwood* answer'd, That the Examinations in the House of Lords were so lately, that it was an easy Thing for the Solicitors who were by to give an Account of the Contrariety in the Evidence, if there were any.

A Member. Have you any other Evidence to offer as to this Point ?

Whereupon
they refuse to
enter upon
Defence.

Sir *Thomas Powis.* All our Evidence tend to contradict these Witnesses ; and if the Reading these Depositions won't be allow'd, you will not put a bad Construction of it. I do not proceed to make a Defence ; for I cannot do it, unless I had some other Instructions from my Client, so we must submit.

A Member. Whether they have any thing to offer in Defence of the Dutchess upon the Crime she is charg'd with ; for, I believe 'tis a new Thing for Council when their Client is charg'd with a Crime, to say, they cannot defend her, unless they go and ask whether they shall defend her or No. If they have any thing to say in her Defence, we shall be ready to hear it.

Sir *Thomas Powis.* I would be glad to make the best Defence this Case may bear ; I have defended it twice with good Success, and this is a third time ; and I must own to you, That the Course of our Evidence we did propose to ourselves, is so far broke by the first Determination you were pleas'd to make, that I cannot venture upon the rest of the Defence. If so be your Pleasure, be not not to admit this Matter.

The Bill
passes the
Commons.

The Council being withdrawn, the Committee proceeded upon the Bill Clause by Clause, and went through it, and ordered the same to be reported. Whereupon the Bill was pass'd.

PROCEEDINGS between
 the **KING**, **THOMAS KENDAL**, and **RICHARD ROE**, in
 the **KING'S-BENCH**, on an
Habeas-Corpus upon a **Commitment** for **HIGH-TREASON**,
 Mich. 7 Guil. 3. Octob. 31.
 1695.



HE Prisoners being brought to the
 Bar on *Thursday* the 31st of *October*, 1695, on an *Habeas Corpus* directed to the Keeper of *Newgate*, return'd the Cause of their Detainer to be a Warrant under the Hand

Page 605.
 The Prisoners committed by the Secretary of State.

and Seal of Sir *William Trumball*, one of his Majesty's Privy Council, and Principal Secretary of State, as follows: *These are in his Majesty's Name, to authorize and require you to receive into your Custody, the Bodies of Thomas Kendall and Richard Roe, herewith sent you, they being charg'd with High Treason, in being Privy to, and assisting the Escape of Sir James Montgomery, out of the Custody of William Sutton, one of his Majesty's Messengers in Ordinary, and charg'd with High Treason. You are to keep them in safe and close Custody until they shall be deliver'd by due Course of Law. And for so doing this shall be your Warrant. Given at the Court at Whitehall the 24th of October, 1695.*

Sir

Sir B. Shower's Argument that a Secretary could not commit. Sir Bartholomew Shower being Council for the Prisoner, took Exceptions to this Return; for that the Person Committing had no Authority for that Purpose: He said his Clients thought themselves hardly dealt withal, the Information against them being only for assisting the Escape of the Centinels who were Privy to Sir James Montgomery's Escape; but this being a Fact of which the Court would not take Notice, he confin'd himself to the Return, and insisted, that a Secretary of State, *quatenus* Secretary, could not Commit for Treason or Felony; he was not a Privy Counsellor, *quatenus* a Secretary, or a Justice of Peace; for tho' in Fact he might be in the Commission, yet, unless he had taken the Oath of Office on a *Dedimus*, he could not Act as such.

Privy Counsellor must take the Oath of Office before he can act as a Justice. The Law took Notice of Constables, Sheriffs, Coroners, Escheators, and the like; but the Books which treat of the Jurisdiction of Courts, the Pleas of the Crown, or the Officers of Justice, made no mention of a Secretary of State; his Office rather related to Foreign Negotiations, than to Criminals, Prisoners, or Goalers. In all the Debates about the Liberty of the Subject, and wrongful Commitments in Parliament, in 4 *Car.* 1. 1628; and among all the Precedents there mention'd, there were none by a Secretary, tho' there were several *per Mandatum Dom. Regis* by Warrant from the Lords of the Council: And it seems strange, if such a Power was lodg'd in this State Officer, there should be no Precedent for it in those Times, when Extrajudicial and general Warrants were so frequent, that they became a Grievance to the People, and such a one as laid the Foundation of the Petition of Rights.

Page 606.
A Secretary cannot administer an Oath, &c.

A Secretary cannot Administer an Oath; and the Law requires, that no Man shall be committed on an Extrajudicial Warrant, unless upon Oath: If there be but a Suspicion, there ought to be Oath of the Cause of such Suspicion: For the Person Committing cannot Commit on another Suspicion, unless there be Oath of some reasonable Cause for it; neither can a Secretary take Bail of the Person

son accused, or a Recognizance to prosecute; and he might Challenge any Man to shew any one Recognizance ever return'd into any Court that was taken by a Secretary, either for the Appearance of a Criminal, or for the Prosecution of one.

Nor is a Secretary oblig'd by the Statutes that require Justices to return Informations and Examinations of the Persons accus'd, and Witnesses: Whereupon Mr. Secretary *Coventry* scrupled it, and by the Advice of Sir *William Jones*, took the Oath of a Justice of Peace; and of late, the Secretaries of State have thrown the Burthen on their Under Secretaries, who have been sworn Justices of the Peace.

But admitting a Secretary can Commit in this Case, the Parties ought to be bail'd according to the *Habeas Corpus Act*; for that provides, they shall be forthwith bail'd, unless they be committed for Treason or Felony, *specially mention'd and express'd* in the Warrant; and if it be specially express'd, then upon Prayer, if not indicted, they are to be bail'd the last Day, &c. Here therefore the Parties ought to be bail'd, because the Treason is not particularly express'd; and so a Commitment for Felony generally would bring a Man within the Benefit of the Act to be bail'd.

A Voluntary Escape of a Prisoner could be no Felony, unless the Prisoner was under lawful Custody, by a lawful Warrant expressing the Offence; and the same Rules must hold in the Case of a Traytor's Escape, as to the Warrant of Commitment, and Lawfulness of Custody, as doth in Case of Felony: Therefore if the Party commanded to receive, or the Person to whose Custody he was committed, were no lawful Officer, then such Custody could not make the Rescuer Guilty of any Capital Offence, *Co. 2 Inst. 550*. And in this Case it did not appear what the Warrant was, upon which Sir *James* was in Custody; nor was the Messenger in whose Custody he was, a lawful Goaler; the Practice of making their Houses Prisons, was but of late; their Law-Books took no Notice of him as a legal Officer; he was at most
but

The Kind of Treason, or Felony, must be specially express'd in the *Mittimus*.

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A Messenger's House no lawful Prison.

Page 680.

Commitments must be to the County Goal; or the Escape, or Rescue, could not be Treason, or Felony.

but a Gentleman Porter, and that Method of Commitment to Messengers had been severely censur'd. It was true, any Man might be commanded to carry another to Prison, but he did not thereby become a Goaler, to detain him nine or eleven Months, as some Messengers had done. The Law that requir'd Commitments to the County Goals, was a sufficient Evidence of the insufficiency of a Messenger's Power to detain; and if he could not legally detain, the Consequence must be, that the Escape or Rescue was no Treason.

But further, it was not said with what Treason Sir *James* was charg'd, or how he was charg'd; it might be for such a Treason wherein the receiving or helping to Escape was not Treason; and it might be for Treason generally, and then Sir *James* was bailable; consequently the Rescuer could not be excluded from Bail.

Nor could the Rescuer be tried till the Prisoner was attainted, which was another Reason for their being bail'd; for here Sir *James* was dead, having never been attainted or indicted, which render'd it impossible for the Prisoners to be try'd for Treason; the Rescuers could only be Fin'd and Imprison'd in this Case.

Sir *Tho Tre-*
vor, Att. Gen.
for the lega-
lity of the
Commit-
ment.

Mr. Attorney General answer'd, that the Rescuing a Felon, was Felony; and the Rescuing a Traytor, was Treason; that a Messenger was a lawful Officer; however, any Man might imprison a Traytor. That the Power of a Secretary to Commit had been settled, of which there had been many Precedents, and pray'd Time to look into them.

Sir *J. Hawles*,
Sol. Gen.
for the
Commit-
ment.

Mr. Solicitor observ'd, that it had been admitted the Privy Council could Commit, and the Office of Secretary of State was antienter; that a Goaler *de facto* was within the Law; and the insufficiency of Sir *James Montgomery's* Commitment was not material: However, if the Commitment was good in Substance, it was enough; it need not be so certain and special as an Indictment, and therefore pray'd the Prisoners might be remanded.

L. C. J.

L. C. J. How were the Commitments at Common Law before Justices of Peace were instituted? My Lord *Coke* indeed said, that none could be imprison'd till Indictment, but that deserv'd Consideration; if they were to search the Records in the *Tower*, they would find Commitments there by Secretaries of State.

Mr. *J. Rokeby*. I can see no Reason upon the Whole, why they should not be bail'd; but since Mr. Attorney is not prepar'd, it is fit he should have Time.

On *Wednesday* the 6th of *November* the Prisoners were brought up again by Rule of Court, and Sir *B. Shower* mov'd again that they might be bail'd.

Mr. Attorney said, he should not have much oppos'd it, but that several Questions had been made at the Bar; as that a Secretary had not Power to Commit; that this Escape was no Treason; that a Messenger was not a legal Officer; and since these Things had been started, he must insist upon it, that it was a good Return, and that the Prisoners ought to be remanded.

L. C. J. Then we must hear them again

Sir *B. Shower*. My Lord, I have perus'd the Resolutions of the Judges in 34 *Eliz.* 1 *Anderson* 297, 298. and must own that 'tis said there, that one or more of the Lords of the Council may Commit; how far that is Law, must be examin'd: And I must beg your Lordship would take Notice of another Resolution there, which condemns this Return, and destroys the Power of a Messenger; if this be Law, the Prisoners ought to be bail'd. It complains, that divers Persons were, against Law, committed to Prison in private Places; and not to any Common or Ordinary Prisons, or lawful Officers, as the Sheriff and other Persons lawfully authoriz'd to keep a Goal; so that upon Complaint made, the Queen's Courts could not learn to whom to direct her Majesty's Writs, and by this Means, Justice could not be done: And if these Resolutions were allow'd to be of any Authority in one Part, they ought to be so in others.

Sir *B. Shower's* further Argument against the Legality of the Commitment.

A Privy
Counsellor
can't commit
because he
can't admini-
ster an Oath.

But these were extrajudicial Opinions of the Judges, from which they might Vary afterwards (as they did in the Case of Ship-Money) and were not binding to them or their Successors, as legal Resolutions: And if they were Law, yet did they not relate to the Office of Secretary, but only to that of a Privy Counsellor; and they did insist, that that Resolution that one single Privy Counsellor might Commit, was not Law; for he, no more than a Secretary, could Administer an Oath, or take a Recognizance: And it was absurd to say, that a single Person should be an Officer to Commit, and yet could not do what was Necessary in order to it.

That the King himself could not Arrest a Man for Treason, or Felony; or Command one in his Presence to be arrested for either; he must Act by his Writs, or by some Order or Rule of the Courts of Justice: A Privy Counsellor was to advise the King, he was sworn to it; to withstand all Traitors, and discover all Conspiracies, and so was every Subject by the Oath of Allegiance; but the Oath of a Privy Counsellor contain'd nothing relating to Commitments.

Page 610.

By *Magna Charta* 19 Hen. 3. Cap. 29. which had been confirm'd by forty Acts of Parliament, it was enacted, that *Nullus liber homo imprisonetur nisi per legem terre*; and this was made on Account of illegal Commitments. Coke says, that there was no Invasion of this Law till *Edward 3ds* Time, and then the People quickly resented it; for in 5 *Edward 3. cap. 9.* the great Charter is confirm'd; and by 25 *Edward 3. cap. 9.* it is further enlarg'd and declar'd, That from thenceforth, *None shall be taken by Petition or Suggestion made to the King, or to the Lords of the Council, unless it be by Indictment or Presentment of good and lawful People of the Neighbourhood.* He would not say that these were Authorities against a Commitment by the Privy Council; but they seem'd strong against an extrajudicial Commitment by a single Lord of the Council.

Mr. Serjeant *Levinz* also, in behalf of the Prisoners, urg'd, that the Return was ill, because the Commitment was to a Messenger; that it ought to have been to a County Goal; that the Custody upon an Apprehension ought to be but twenty-four Hours. *Briston* 19 Customer of *Normandy*, 456 *Hill*. 22. *Edw.* 4. p. 4.

That those Messengers exacted Fees, 6s. 8d. or ten Shillings *per Diem*; which was in Effect, to Fine the Party before he was convicted; and many other Arguments were repeated that had been insisted on the Day before.

The King's Council answer'd, that the Rescuing one in Custody upon Suspicion of Treason, was Treason: And as to the Secretary's Commitment, it was not such a Novelty as had been pretended; that it was very antient. The Case in 11 *Leon.* was flat to the Purpose; and in the *Tower* they found a Commitment in 1660, by Secretary *Morris*, and many more had been since; but Sir *Joseph Williamson*, who had the Papers, was in *Ireland*. It was not Necessary, that he who commits should be able to give an Oath; the House of Commons could not give an Oath, and yet could commit.

S. B. *Showers* reply'd, he was glad to find there were so few Precedents for a Secretary's Power; if there had been more, Mr. Attorney would have produc'd them. That the House of Commons's Power was an Instance not fit for him to Answer: And as they admitted that a Secretary could not give an Oath, he thought the Consequence was plain that he could not commit.

L. C. J. I did always give Credit to the Resolutions of the Judges in *Anderson*; and it is part of a Privy Counsellor's Oath to take Care of the King's Person against Traytors. Was there not a Goal Delivery at Common Law; and consequently does not the Law suppose that some are committed thither before the Goal Delivery? And then,

Page 612.
Mr. Serjeant
Levinz a-
gainst the
Legality of
the Commit-
ment to a
Messenger;

The King's
Council
maintain the
Legality of
the Commit-
ment.

Sir B. *Showers*'s
Reply.

Opinion of
the L. C. J.,
on it.

A Felon may be committed to any Person on an Apprehension.

by whom were these committed antiently? * Tho' a Messenger be not a proper Officer, any Person may be order'd to receive for a convenient Time for Examination, &c. Commitments regularly ought to be to the County Goals: But Mr. Attorney, the Question is, Whether you ought not to have specify'd in your Warrants, for what Treason Sir *James* was committed; for the Escape will be the same Species of Treason with that for which the Party rescu'd was committed: I think therefore we must Bail them.

The Court of Opinion a Secretary might commit, &c.

J. Rokeby. A Commitment by a Secretary of State, was long before Sir *Lionel Jenkins's* Time. *Walsingham* committed near two hundred Years ago. And there is another Precedent in 2 *Leon.* 175, *Hillyard's* Case. I think a Conservator of the Peace at Common Law may commit, and so may a Constable. It is incident to his Power of Committing, that he may give an Oath, and take a Recognizance; and (*Quod Mirum*) one of the Council may commit. I would not have the Students go away with the Novelty of it: And for Messengers, for any Thing appears, he might be only carrying him to Goal. However, I think they ought to be bail'd, because it is not express'd in the Warrant, what the Species of Treason was for which Sir *James* was committed.

Or a Privy Counsellor.

The Prisoners bail'd because the Kind of Treason was not specified.

Mr. J. Eyre. There may be a Difference between carrying to Prison, and a Commitment with a Charge upon them; and there may be a Difference between specifying, and not specifying the Treason. Upon the Whole, I think they ought to be bail'd.

The Prisoners were bail'd to appear the last Day of the Term, to Answer such Matters as should then be objected against them.

* Justices of Peace are not by Common Law, but appointed by Statutes; the first of which was 1 *Ed.* 3. *Cap.* 16. By Common Law there were only Conservators of the Peace whose Power was very short of that of a modern Justice. See *Crompton's* and *Dalton's Justice.*

The

The TRIAL of PATRICK HURLY, of Moughna, in the County of Clare, Gent. at the King's-Bench in Ireland, on two Indictments; the one for Perjury, and the other for conspiring with Daniel Hicky, &c. to cheat the Popish Inhabitants of the County of Clare, May 31. 1701. Pasch. 13 Will. 3. Page 613

THE said *Patrick Hurly* was indicted for Perjury, in having sworn before *Neptune Blood*, Dean of *Killsenora*, one of his Majesty's Justices of Peace for the County of *Clare*, that he was robb'd of 300 Pistoles in Gold, and several other Things, by four Persons unknown to him; but whom, by the Tone of their Voice, he believ'd to be *Irishmen* and *Papists*: Whereas in Truth, he well knew them by their Names and Persons, being set on by himself, and did not take any Thing from him. Indictment for Perjury, for swearing a sham Robbery.

The said *Patrick Hurly* was also indicted a second Time; for that he did falsely and deceitfully conspire, with one *Daniel Hicky*, and several other Malefactors, unjustly to oppress the *Popish* Inhabitants of the County of *Clare*, and cheat them of a great Sum of Money, by colour of the *Raparee Act*. A 2d Indictment for a Cheat, in conspiring to cheat the County of a Sum of Money.

Dean Neptune Blood, who took Hurly's Examination, sworn.

He depos'd, that the Examination produc'd in Court, was taken by him on the 6th of *March*, 1699; the Prisoner, *Patrick Hurly* came before him, and made Oath of the Facts therein contain'd, (*Viz.*) That on *Sunday* the 3d of *March*, 1699, about eleven a-Clock at Night, being at his Father's House at *Moughna* in the said County of *Clare*, several Persons with their Faces mask'd, forc'd into the Deponent's Chamber, made a shot at him. The Justice of Peace gives Evidence of his Examination before him. Page 614.

him, and tied him and one Mr. *Ronaine*, his Friend, with Cords fast to the Bedstead: That by the Tone of their Voice, they seem'd to be *Irishmen* and *Papists*: That he knew not one of them, either by their Names or Persons: That they broke open several Trunks, and took out of one of them a Bag wherein were 374 Guineas, and 345 Pistoles, a Gold Cross, set with Diamonds, and several other Things of Value, a great Number of *Holland* Sheets, and *Holland* Shirts, in all to the Value of about 1300 l.

This he swore according to a late Act there, call'd, the *Raparee Act*, that he might oblige the Country to reimburse him the 1300 l. tho' it was a mock Robbery by Persons he had employ'd, and very well knew, and who took Nothing at all from him, but what they return'd him again, designing to Cheat the Country.

Calaghan Carty, *sworn*.

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Mr. *Bernard*, Council for the Prisoner, objected, that this Witness, and some others, who were brought against him, were actually sent to Goal for this Robbery, and threatned to be hang'd, unless they would swear it was a sham Robbery, and therefore their Testimony ought not to be allow'd; but this Objection was over-rul'd.

Calaghan Carty's Evidence for the King.

Calaghan Carty depos'd, that he was Servant to Mr. *Patrick Hurly*, the Prisoner; that his Master call'd him into the Stable, and shew'd him a Purse of Gold, and told him, he was to pay it to one Mr. *Arthur* on such a Day, and if he did, he should be ruined; but if he could make Mr. *Arthur* believe he was robb'd, he would compound with him. That he desir'd the Deponent therefore to join with some others, to commit a feign'd Robbery in his Father's House, and shew'd him the Trunks where he would put his Money and Linnen: That the Prisoner provided them with Blue and Red Coats, Vizards, Swords, and Fire Arms; but the Fire Arms were loaded only with Powder. That it was about ten a Clock on *Sunday* Evening, being

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being the 10th of *March*, 1699, before People went to Bed, that they put this Project in Execution. That they entered the House just as Mr. *Ronaine*, a Friend of their Master's came out, and seiz'd some of their Arms, but without any Intention to do Mischief. That they bound their Master and Mr. *Ronaine* to the Bed posts, and poured the Money, or Counters, for he could not tell what they were, out of the Purse before Mr. *Ronaine*, as they were directed, and then carried off the Linnen and Money; but that they were afterwards return'd to Mr. *Hurly* again.

Margaret Conceen, *sworn.*

She depos'd, that she was Servant in Mr. *Hurly's* House, which stands alone, a Year and half: That about ten a-Clock one *Sunday* Night, there came in four or five Men in Disguise, arm'd with Swords, Pistols, &c. That she was then in the Kitchen; and soon after, she heard *Mac Cay*, the Footman, cry out, his Master was murder'd. That several shots were made at her, but no hurt done, nor she could see no Marks of shot upon the Walls afterwards. That the Arms they had were the very same that Mr. *Hurly* had in his House, and lay upon the Table that Evening the pretended Robbery was committed. That she was of Opinion first, that it was a real Robbery, but was otherwise inform'd afterwards by *Calaghan Carty*; and she was confirm'd in its being a sham by a Table Cloth, and some other Linnen being sent home, which her Master pretended he had been robb'd of.

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Margaret Conceen the Maid
Servant's Evidence
against the
Prisoner.

Walter Neylan, *sworn.*

He depos'd, that he was in Prison at *Ennis*, for *Hurly's* Debt, for which he was bound to one *Thomas Arisbur*; and that while he was there, *Hurly* and some of his Servants were brought Prisoners thither, on Suspicion of their having feign'd this Robbery to cheat the Country. That after

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Walter Neylan's Evidence.

The Trial of Patrick Hurly, Gent.

Daniel Carty had discover'd the Fraud, *Donogh O'Brian Andrews*, another of *Mr. Hurly's* Dependants, who was likewise a Prisoner there, apply'd himself to the Deponent, and desir'd him to enquire of *Mr. Hurly* what Method he would take to get him discharg'd; and upon acquainting him with it, *Mr. Hurly* answer'd, he should be undone if the said *O'Brien Andrews* confess'd it, and gave the Deponent a piece of Money to give to *O'Brien Andrews*. That *O'Brien* said, that would not do, he must tell the Truth. And *Hurly* told the Deponent thereupon, that he would give him any Gratification in the World, if he would prevent *Donogh O'Brien's* coming in against him.

To this the Prisoner, *Mr. Hurly*, reply'd, that *Neylan*, the last Witness, was exasperated against him, on Account of his having been sent to Prison for his Debt: That he had tamper'd with the Witnesses, and was become his inveterate Enemy. That he not only swore against him maliciously and falsely himself, but had incited others to swear against him.

Captain Charles Macdonough sworn.

Capt. Macdonough's Evidence.

Page 621.

He depos'd, that he was *Mr. Hurly's* Solicitor, and intimately acquainted with him. That being at his House just before the pretended Robbery, and understanding that *Mr. Hurly* had brought no Money home with him from *Dublin*, he told him he was a strange Man to come without Money, the Country would be too hot for him. That the present Sheriff was a Friend to his Adversary *Mr. Arthur*. And that *Hurly* did then fortify his House, and was in no Condition to pay his Debts. That *Hurly* said, that his Friends, *Sir Toby Butler* and *Colonel Macnamarra*, had a great Influence on the Sheriff, and he hop'd they would prevail on him to do him no harm; which confirm'd him in the Opinion that he had no Money. He depos'd further, that *Mr. Hurly* having brought the *Raparee Act* from *London*, was reading it over, and said it was a very pretty way

way for Persons to recover Money of the County. That after the Deponent had left Mr. *Hurly*, Captain *Obrien* wrote him word the Prisoner was robb'd, and desir'd the Deponent to come and solicit at the Assizes at *Ennis* on his Behalf; but he was so far from believing he was robb'd, that he refus'd to be concern'd for him, and wrote Mr. *Hurly* a drolling Letter on the Occasion. That about *February* last, the Wife of *Daniel Hickey*, a Dependant on the Prisoner, who was suspected to be in the Robbery, came to the Deponent, and said her Husband was like to be undone by passing away false Counters; that if he could get his Liberty, he would go to *Dublin*, and swear the Robbery was a Cheat, and that they had some of the Counters which were pretended to be Gold in their keeping. That the Deponent acquainted Mr. *Butler*, a Justice of Peace of the County of *Clare*, with this, and the Woman was taken up and indicted for passing away of Counters for Money.

Walter Huonin, *the High Constable, sworn.*

He depos'd, that he had a Warrant to search for Goods, pretended to be stolen from *Patrick Hurley*, and that in a Dunghill at *Daniel Hickey's* House in *Moughna*, about a Quarter of a Mile from Mr. *Hurley's*, he found a Purse with an hundred and twenty-one yellow Counters in it, which he produc'd in Court.

Page 623.
Huonin's
Evidence.

Mortagh Mac Colloghy *sworn.*

He depos'd, that *Hickey's* Wife bought a Cow of him, and she wou'd have paid him for her with two yellow Pieces of Coin like Guineas: he told her they were not Guineas, and believ'd they were some of *Patrick Hurley's* Gold: That he gave her three Pence Half-penny and a Quartern of Tobacco for them, and she took it, and wish'd the rest were as well sold: and the two Pieces were

Page 624.
Mortagh
Mac Colloghy's
Evidence.

The Trial of Patrick Hurly, Gent.

were produc'd in Court, and compar'd with the rest of the Counters.

Joseph Lynch *sworn*.

*Joseph Lynch's
Evidence.*

Page 625.

He depos'd, that he was intimately acquainted with the Prisoner, Mr. *Hurly*, and drinking with him at one Mr. *Bargery's* House, he saw him take a Bag out of his Portmanteau that held about a Quart, which he took to be Money; but looking into the Bag, he found them to be all Counters, and asking what he did with them, *Hurly* said he intended to make use of them for his Diversion. That *Hurly* afterwards discours'd him about feigning a Robbery, said it was a pretty way of getting Money, and wou'd have had the Deponent concern'd with him in such a Contrivance, but he refus'd. He said further, that the Prisoner sent a Trunk of Linnen to his House, after the Robbery was committed, which was taken away from thence the Night after Mr. *Hurly* was carried to Jail.

Charles Cassidy, *Surgeon, sworn*.

*Cassidy's
Evidence.*
Page 627.

He depos'd, that the Prisoner's Father, Mr. *Hurly*, being sick, he was sent for to look after him. That the Prisoner propos'd his being concern'd in the pretended Robbery, and offer'd him forty Guineas, and upon his objecting he was too well known, said he would get him a Vizard-Mask. That the Deponent agreed to bear a part in it, but coming home his Heart fail'd him, and he had no Hand in it.

Daniel Kiefe *sworn*.

He depos'd, that the Prisoner enquir'd at one *Bently's* House for Masks and Vizards, and being told he might have them in *Christ-Church-Yard*, he went thither for them.

Several

Several other Witnesses were produc'd, to prove that the Prisoner *Hurly* was in great want of Money, and that it was not at all probable he was robb'd of the Money he pretended he was.

Mr. *Bernard*, Council for the Prisoner, then enter'd on his Defence, and made his Observations on the Evidence that had been given for the King. He said, Mr. *Hurly* came with a good Fund of Money into *Ireland*, and left large Sums behind him in *France*. That Sir *Donagh O'Brien* had a Quarrel with Mr. *Hurly*, and had influenc'd the Grand Jury not to find the Bill of Indictment against the Robbers, notwithstanding the Robbery was fully sworn. That the four Men who had been taken up for the Robbery, were promis'd their Lives if they wou'd confess it to be a sham Robbery. That they were laid in heavy Irons, and threaten'd to be hang'd if they wou'd not declare the Robbery to be a Cheat: And in these Circumstances Confessions had been extorted from them.

Page 618:
The Prison-
er's Council's
Observations
on the Evi-
dence.

Mr. John Hurly, Brother to the Prisoner, call'd on his Behalf.

He depos'd, that he receiv'd several Sums of Money of his Brother's, from *Holland* and elsewhere, viz. four hundred and ninety Pound by Colonel *Lovet*, two hundred Pound by *Jeremiah Donavon*, and in the Year 1697, from Mr. *Symons* three hundred Pound ten Shillings, and two hundred Pound more in *Limerick*. That he paid most of this Cash to his Brother *Hurly*, the Prisoner, some was paid to Mr. *Arthur*, and more to Mr. *Burton* and others. He depos'd further, that he saw a Note that was given to *Daniel Hickey* by Mr. *Hickman*, a Justice of Peace, and *Cusack*, the then Sheriff, whereby they promis'd, that if he wou'd make a true Discovery concerning

John Hurly's
Evidence for
the Prisoner.

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Hurly's

The Trial of Patrick Hurly, Gent.

Hurly's Robbery, they would interceed to the Government for a Pardon for him.

Dorothy Kemp *sworn.*

Page 630. She depos'd, that she liv'd at *Moughna*, about
Dorothy Kemp's a quarter of a Mile from Mr. *Hurly's* House.
 Evidence. That she happen'd to be there that Night the
 Robbery was committed, and Counsellor *Ronaine*
 also was there, having waited three Days to pay
 Mr. *Arthur* some Money. That Mrs. *Hurly*
 went from home the *Saturday* before the Rob-
 bery, and took some Gold out of a Chest, and
 shew'd the Deponent some of it. That the
 Deponent went to the Chest for some Table
 Linnen, and laid her Hand upon the Bag where
 the Gold was : That Mr. *Hurly* came into the
 Room at the same time, and ask'd her what she
 did there, and took the Bag and put it in his
 Closet. That the Night the Robbery was com-
 mitted, Mr. *Ronaine* was going out of the Door,
 when the Robbers rush'd in with Swords and
 Pistols, and that Mr. *Hurly's* Man cried out his
 Master was murder'd. She was then in the
 Chamber turning down the Bed, and five of them
 came up, and two more staid in the Parlour.
 That the Robbers tied Mr. *Hurly* and Mr. *Ronaine*
 with Cords, and forc'd her into the Room
 where Mr. *Hurly's* Father lay bedridden. And
 she depos'd further, that she was offer'd ten
 Pounds by *Murrough O'Brien*, to hide Counters
 in her Master's House, or *Hickey's*. That
 Mr. *Hurly* had thirty Pair of Holland Sheets,
 and they were all taken away but five Pair by the
 Rogues.

Page 631. Then the King's Council call'd *Murrough*
Murrough *O'Brien* to confront the last Witness. *Murrough*
O'Brien depos'd, That he was so far from ma-
 king any Offers to *Dorothy Kemp*, the last Wit-
 ness, that he did not think it safe conversing with
 her ; she was a Lewd Woman and had two Chil-
 dren by the Prisoner Mr. *Hurly*, and that the De-
 ponent had no Communication with her. That as
 to

to *Hickey* indeed his Wife told the Deponent she would discover all if he would bring her Husband home again, and he wrote a Letter to *Hickey's* Wife to come to him about that Affair.

Daniel Mac Cay, Servant to *Hurley*, call'd.

He depos'd, that he had serv'd Mr. *Hurly* the Prisoner a considerable Time : That he was in the House when the Robbery was committed. He saw five of the Robbers ; that they put the Family in great Terror, and fell upon his Master. He thought at first they were Bailiffs come to arrest his Master ; but coming into the Room where they had tied him, he found they were Thieves. That there were several Shots made, but he could not say any Body was hurt, or that there were any Bullets to be found, or any Marks they had made in the Walls. And depos'd farther, that one *Christopher O'Brien* did tamper with him to take off his Evidence, and would have him swear that his Master's Gold was Counters, but he was sure it was Gold. He depos'd also, that his Master shew'd him a great Sum of Money at *Dublin*, consisting chiefly of Pistoles, and told him he design'd to carry it into the Country and pay off Mr. *Arthur*. And being ask'd what Road they went down, he nam'd several Places that were a great deal out of the way, which rendred his Evidence suspected.

Daniel Mac Cay's Evidence

Page 632.

Christopher O'Brien call'd.

Page 634.

He depos'd, That he never made *Mac Cay* any Promise or Offer in his Life.

John Crips sworn,

He depos'd, That he was beaten and threaten'd by one *Halloway*, because he would not swear against Mr. *Hurly* the Prisoner ; and that Mr. *Nayland* and Mr. *Lynch* offer'd him great Advantages if he would give Evidence against the Prisoner ; but

John Crip's Evidence.

but they all denied upon their Oaths that they had any such Conversation with him.

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Daniel Hickey call'd.

Den. Hickey's Evidence.

He depos'd, That he was carried to Goal and laid in Irons. That he was told that *Daniel Carty* had confess'd the whole Matter; and being brought before a Justice of Peace, the Deponent was forced to swear the Robbery a Sham by Mr. *Hickman* and Mr. *Cusack*, who told him he should be hang'd if he did not, and it was only through Fear he was compell'd to give in that Information, wherein he had depos'd that the Robbery was contriv'd by Mr. *Hurly*, and that the Deponent had been an Actor in it. But it appearing that this Witness had sworn Examinations on both Sides that were inconsistent, and frequently contradicted himself, his Evidence was slighted by the Court and Jury.

Donogh O'Brien Andrews, Junior, call'd.

Donogh O'Brien's Evidence.

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He depos'd also, That he was manacled and fetter'd in Goal, and forc'd to sign an Examination, wherein he made Oath before a Justice of Peace, that it was a Sham Robbery, which he now denied in Court. But his Father being produced as an Evidence against him, the Evidence of the Son was not much regarded.

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et seq.

The King's Council made no other Observations on the Evidence, but that the Prisoners Witnesses were all of them poor profligate People, that had acknowledged themselves forsworn on one Occasion or other. And that the Witnesses for the King were most of them Men of Credit and Reputation, and had prov'd the Prisoner perjurd beyond all Question.

The Judges
Directions to
the Jury.

Mr. Justice *Coote* the Judge, having summ'd up the Evidence, did in his Directions to the Jury suggest, that there was little Credit to be given to *Hurly's* Witnesses, and that the Purjury was tully prov'd.

The

The Jury being withdrawn, return'd about half an Hour afterwards, and brought in the Prisoner guilty on both Indictments. The Attorney praying the Judgment of the Court thereupon, Mr. Hurly was sentenced to pay an Hundred Pounds Fine on the first Indictment, and to be imprison'd till it was paid. The King's Council insisting that the Pillory was the Punishment for a Cheat, when they mov'd for Judgment on the last Indictment. The Court answer'd, if he was not able to pay the Fine, he ought to suffer Corporal Punishment, but the Judgment on the last Indictment was respited.

Prisoner found guilty on both Indictments.

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His Sentence.

*The Lord Haversham's SPEECH in the House of Lords, on the first Article of the Impeachment of Dr. HENRY SACHEVERELL. **

My LORDS,

WHEN I consider where this Impeachment began, I cannot think but the Design of it was very good, but whatever it was, in its first Intendment, it is very evident, it has already produc'd very mischievous Effects; it has created great Disturbances in private Families, and Tumults amongst the People; and raised a Ferment in the Nation, that will not be laid by your Lordships Judgment. It has been a two edged Mischief; giving the Church on the one side, and the Dissenter on the other, too just Aprehensions that they are both in Danger. Nor can this be wondered at, when your Lordships have been told, by some of the Managers, of a *pretended* Divine Right of the Church; and when it has been more than hinted by the Managers of the House of Commons,

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* As the Editors of the Folio Edition have thought fit to print these Speeches in their Work, we here insert them, tho' the Argument was wore Thread-bare at the Trial.

That

That the Clergy ought to be directed by the Civil Power, what Doctrine they should teach : Nay, when they have authoritatively taken upon them to interpret Scripture, and charg'd it as a Crime upon a Minister, that he had wrested several Places of it to his own wicked Intentions.

My Lords, After so noble a Defence made for the Doctor by his Counsel, and so great and moving an Apology by himself, I should not trouble your Lordships upon this Occasion, were it not more in Justification of my self, for the Judgment I shall give, than for the Sake of the Doctor, whose Cause, I think, now stands in very little need of it.

I was, *My Lords*, a Sufferer in the late Reigns, as well as others ; I was in the Convention-Parliament, and in the Vote of Abdication ; and am, at this Day, of the same Principle I was then ; and yet, notwithstanding this, I am not ashamed to say to your Lordships, that I think my self obliged, in Justice, to acquit the Doctor from the Charge brought against him in this Article. And tho' this may seem strange to some of your Lordships, yet, I hope, it will not appear so very strange as to see Bishops vote against their own Doctrines, and Dissenters in the midst of a Mob, that are pulling down Meeting-Houses.

I shall not trouble your Lordships about the Original of Government, or the divers Forms of it ; your Lordships heard that learnedly discoursed on by one of the Managers of the House of Commons below : But there is one thing, *My Lords*, that if my Memory serves me right, that Gentleman omitted, and it is a Matter too that I take to be of the greatest Consequence to any Government whatsoever : I mean, the Divine Appointment, or Institution of Government itself ; from which Appointment it is, that Men are obliged to Obedience to the Magistrate, which is the greatest Security the Magistrate has. And I the rather mention this, because of Notions that some People have of late advanced of their own, of a discretionary Obedience only ; that is, in my Opinion,
whilst

whilst the Government is for them, they will be for it; and think themselves bound to obey no longer. It is not necessary, to the Proof of this Divine Authority, to fix the just Time and Place. It is enough, that we have it as expressly, as plainly, and as clearly declared, as can be put into Words, that it is so.

There is another thing, *My Lords*, that in general, I would mention to your Lordships, before I come to the Article itself, which may otherwise be the Occasion of some Mistake in this Debate; we are not now judging according to our own Notions of Politicks, or determining how far Resistance or Non-Resistance is lawful. It would be a strange Rule of Judgment, to find any Man guilty for the Sake of one's own private Opinion, and for the establishing a Doctrine which he likes, and his Neighbour does not. But the only Question before your Lordships is, whether, and how far, the House of Commons have made good their Charge against the Doctor. And, I take Liberty to say plainly to your Lordships, that, in my Opinion, they have been very far from making good their Charge against him in this Article.

My Lords, to prevent the least Mistake, I shall read the Words of the Article to your Lordships, as they stand in the Impeachment.

“ He, the said *Henry Sacheverell*, in his said
“ Sermon preach'd at *St. Paul's*, doth suggest
“ and maintain, That the necessary Means us'd to
“ bring about the said happy Revolution, were
“ odious and unjustifiable: That his late Majesty,
“ in his Declaration, disclaim'd the least Imputa-
“ tion of Resistance, and that to impute Resistance
“ to the said Revolution, is to cast black and
“ odious Colours upon his late Majesty and the
“ said Revolution.”

The Doctor in this Article is charg'd with having maintain'd, *That the necessary Means us'd to bring about the late happy Revolution, were odious and unjustifiable.* To support this, the Commons say, That having asserted the general Proposition of the Unlawfulness of Resisting the

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Supreme Power, and not having excepted the particular Case of Resistance that was made use of as a Means to bring about the late happy Revolution ; he does thereby reflect both upon the Means, and upon the said Revolution. In Answer to this, there have been two things insisted upon to your Lordships, in behalf of the Doctor, by his Counsel: First, That in Cases of such a Nature as this, the Exception is always imply'd in the general Rule ; and there was a very unanswerable Instance brought in Proof of this, at least to most of your Lordships ; it was the Oath of Allegiance to King *James*. All those that took that Oath, took it in general Words, and yet such an extraordinary Case as the Revolution was excepted, tho' not express'd by those that took that Oath. The next was, the Doctor, say they, would have been justly more blam'd, had he mention'd all the Cases of Exception, which extraordinary Cases ought to answer for themselves, whenever they fall out.

And tho', *My Lords*, these two be a full Answer, yet there are two things more, I think with Submission, may be added to it, which have not as yet been taken Notice of.

The first is, *My Lords*, That the Proof against the Doctor is drawn by Consequences of the Commons own making, which he himself disowns ; and I appeal to that Reverend and Learned Bench, who are great Masters of Controversy, whether it is not an establish'd Rule amongst all learned Men that have the least Spark of Ingenuity, That no Man ought to be charg'd with Consequences, let them appear to his Adversary never so clearly and undeniably to follow from his Assertion, when he himself denies those Consequences. This is so known a Maxim, in all Disputes between Protestants and Papists, and between Protestants themselves, that it cannot be deny'd. Now, the Doctor himself denying, as he does, that he had the least Thought of including the Revolution under his general Assertion, or that he apply'd his Doctrine of Non-Resistance to that

that Case, cannot, without the highest Injustice, be charg'd with Consequences which he himself utterly denies.

In the next place, it is impossible, in my Opinion, to prove that Resistance was made use of as a Means to bring about the late happy Revolution; and, consequently, is not within the Doctor's general Maxim.

Means, *My Lords*, is a relative Term, and refers to some End; and the End and Design of the Prince of *Orange* in his coming hither, and of those that join'd him when he was here, being to have the Nation and Rightful Succession secur'd by a Free Parliament, it follows, that whatever Force was at that Time made use of, could not be made use of as a Means to bring about an End which was never intended.

Far be it from me, *Mr Lords*, to lessen the great Undertaking to deliver us from Popery and Arbitrary Power; and tho' the Glory of that Enterprize is wholly attributed to King *William*, 'tis certain, her present Majesty had her Share in it, however that is forgotten: For, give me leave to say, that had not her Majesty countenanc'd the Undertaking of the Prince of *Orange* with her Assistance, in my Opinion, the Success had been very dubious.

Now, is it possible, *My Lords*, to imagine, that it was ever the Design of her Majesty, or those that join'd the Prince of *Orange*, to take the Crown off of King *James's*, and put it upon King *William's* Head?

No, *My Lords*, the avowed great Design was quite otherwise, as appears by the Declaration itself, which was read below: It was to restore and secure our Laws from the Invasions that had been made upon them by Arbitrary Power: It was to secure that Right which all the World knows the Princess had to the Succession of the Crown, and to have every thing settled by a Free Parliament, and not to make a Revolution by de-throning King *James*. This the Prince himself owns, when he says in his Declaration, *he had no*

other Design in coming hither, but a Free Parliament.

My Lords, I take it to be of most dangerous Consequence, to judge any Man by Suggestions and Innuendos: Let what will be said to justify it, it shall never be the Rule of my Judgment.

Groundless Suggestions, *My Lords*, have, within my Memory, been the Pretence of Power, to cover illegal Oppression with the Shew of Reason, to the Publick. I will give your Lordships but one Instance of it: It was the Case of a Reverend Prelate, now in the House; I mean the Archbishop of *York*; his Grace was then Dr. *Sharpe* only. It was in the Year Eighty Six; there was an Order, directed by way of Letter to the Protestant Bishops, to discharge all the inferior Clergy from preaching upon controverted Points in Divinity. They thought it served the Designs of Popery, then, to direct Ministers how they should preach; which was, in effect, to forbid them to defend their Religion. This Precedent was taken from an Order in Queen *Mary's* Time, says the printed Account; when at the same time, it was attack'd by the *Romish* Priests with all the Vigour they were capable of, whilst the Popish Sermons and Discourses were printed by Authority. Notwithstanding this Order, the Doctor took occasion, in some of his Sermons, to vindicate the Church of England, in Opposition to the Frauds and Corruptions of Popery. But this, by the Court Emiffaries, was interpreted much the same Way as the Doctor's Sermon is now, to be endeavouring to beget in the Minds of his Hearers, an ill Opinion of the King and his Government, by insinuating Fears and Jealousies, to dispose them to Discontent, and to lead them into Schism, Disobedience and Rebellion.

My Lords, When the Homilies and Articles, when so many Archbishops and Bishops, and the University, and most of the Foreign Divines too, especially the *Lutherans*, have asserted the same Doctrine of Non-Resistance to the Supreme Power,

as Dr. *Sacheverell* has; I think it the hardest Case in the World, that this unfortunate Gentleman should thus be singled out and made a Criminal, and a kind of Martyr, enduring the Trial of cruel Mockings, yea, moreover, of Bonds and Imprisonment, for asserting the same Doctrine. 'Tis true, *Beza* and *Pareus*, and some others of the *Calvinists*, are of another Opinion; but 'tis known, that *Pareus's* Commentary on the 13th of the *Romans* was burnt at *Oxford*, by the Order of King *James I.* for asserting that Doctrine.

But there is one thing, *My Lords*, so astonishing in this Prosecution, that I cannot but take Notice of it: Those who were at Man's Estate, at the Revolution, know how industrious, on the one side, all that were Friends to King *James* were, to put his leaving the Nation then upon the Foot of Force and Resistance, as thinking this the strongest and best Argument to justify his Withdrawing himself from his People. They rack'd their Brains to find out Arguments to convince Men, that his Life was manifestly in Danger, by staying here; and that it was for the sake of that, and his Liberty, that he was forc'd to withdraw; and that his Withdrawing was just, being an Act of Necessity, and not of Choice.

On the other side, those that were Friends to the Revolution, made it their Business to persuade the World, that all this was but a Colour and Pretence, and that the Fact was quite otherwise; that the Sense and Conviction King *James* had of what he had done, prevail'd upon him rather to throw off the Government, than concur with a Free Parliament.

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That this was the only Foot they then put it upon; and that it was not then put upon the Foot of forfeiting the Government by Male-Administration; if any Man denies, I appeal to the Papers that were then writ, and are now in Print, on this Subject.

This being so, it is very strange to see so great an Alteration in Mens Notions of Things; and that now, after our Constitution has maintain'd

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it self upon this Foot, against all Designs and Attempts that have been made upon it, for above twenty Years, those very Men, and that Party, who endeavour'd to place the Revolution then, upon King *James's* voluntary Desertion, which they call'd *Abdication*, should now, without any Reason given, be for changing that Foundation, and do all they can, to put it upon King *James's* Foot of Force and Resistance. What, *My Lords*, are we endeavouring, after twenty Years, to make King *James's* Title better now than any of his Friends could make it then, and not only finding out Arguments they never thought of, but impeaching any that dare so much as question the Truth and Force of them? This, *My Lords*, seems very strange.

My Lords, I cannot but take notice to your Lordships, of what was said by that noble Lord, who spoke last, because, to me it appears to be a Matter of the last Consequence, to the Honour of her present Majesty. He told your Lordships, that the best Title her Majesty had to the Crown, was her Parliamentary Title. I must take liberty to affirm the quite contrary; and that, in my opinion, the best Title her Majesty has, is her Hereditary Title; tho' I deny not, but that the Act of Parliament is a Strengthening and Confirmation of that Title: But I deny a Parliamentary-Title to be the only, or the best Title that the Queen has to the Crown she wears. And in saying this, I do not fear the malicious Reflections of having a squinting Regard to the Title of any Person on the other side the Water; for in affirming (as I now do to your Lordships) that her Majesty is my Rightful and Lawful Queen, by Right of Inheritance; and as she is Daughter to King *James* the Second, I do in so many Words affirm also, that there is no other Person, the Rightful and Lawful Heir to King *James*, but herself. And if the present Impeachment of Dr. *Sacheverell* shall have this Effect (as I hope it will) to convince the Nation of the undoubted Truth of her Majesty's Right of Inheritance to
the

the Crown, (a Matter now so industriously oppos'd) the Security this will bring to her Majesty's Person and Crown, and to the Succession in the Protestant Line, and illustrious House of *Hanover* afterwards, shall prevail with me easily to pardon any warm and unguarded Expressions, that the Doctor may here and there have dropt, and made use of in any of his Discourses.

The Bishop of Salisbury's Speech in the House of Lords, on the first Article of the Impeachment of Dr. Henry Sacheverell.

THE Council for the Prisoner did so plainly and fully yield all that any Loyal Subject has ever pretended to, that in Cases of extreme Necessity, Self-defence and Resistance were lawful, and that this was the Case at the Revolution; that it may not be necessary to say any thing further on this head, if it had not been that the Evidence they brought seem'd to carry this Matter much further, and that the Prisoner himself allow'd of no Exception in Cases of Necessity. And since it is grown to be a vulgar Opinion, That by the Doctrine of the Church of *England*, all Resistance in any Case whatsoever, without Exception, is condemn'd; I think it is incumbent on me, who have examin'd this Matter long and carefully, to give you such a clear Account of this Point, as may as fully satisfy you as it did my self.

I served in the Revolution, and promoted it all I could. I served as Chaplain to the late King: I had no Command, and carried no Arms, but I was so far engag'd in it, that if I could see that I had gone out of the way in that (and the many Up-and-Downs we have gone thro' since, has given much occasion to reflect on that Transaction) I should hold myself unworthy to appear longer, either in this Habit, or in this Great Assembly; but should think myself bound to pass away the rest of my Life in Retirement or Sorrow. There is nothing more certain in Religion,

gion, than that we ought to repent of every Sin we have committed ; and that we cannot truly repent, unless we repair or restore, as far as it is in our Power.

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The Occasion that the Apostles had to write what we find in their Epistles, with relation to Government, was this: The Jews had a Notion among them from a Passage in *Deuteronomy*, that they were only to set a King over them, *One from among their Brethren, and not a Stranger*. From whence it is, That to this Day they do not think they are bound in Conscience to obey any Magistrate, who is not one of their Nation. Now the first Converts to Christianity being Jews, the Apostles took care that they should not bring this dangerous Notion with them into the Christian Religion: But they did not meddle to determine where this Authority was lodg'd, that was to be gather'd out of the several Constitutions: They did not determine how much was due to the Emperor, and how much to the Senate ; and tho' not long after those Epistles were writ, the Senate condemn'd *Nero* to die *more majorum*, to be whip'd to Death, none of the Christians interposed in that Matter. He prevented that infamous Death by his own Hands: And the Primitive Christians reckon'd it one of the Articles of the Glory of their Religion, that their first Persecutor came to such an End.

The Primitive Christians had no Laws in their Favour, but many against them ; so their patient suffering so many Persecutions according to the Laws of the Empire, under which they liv'd, was conform to the Doctrine laid down by the Apostles. When they came afterwards to have the Protection of Laws, they claim'd the Benefit of them, not without great Violence, when they thought an Infraction was made on those Laws ; which broke out into great Tumults, in many of the chief Cities of the Empire, not excepting the Imperial City itself.

But to proceed with the History of our Church ; When the Articles of Religion were settled, the
Books

Books of the *Apocrypha* were indeed declar'd not to be a part of the Canon of the Scripture, but yet to be useful for the *Example of Life*, and the *Instruction of Manners*. A great Part of these are the Books of the *Maccabees*, which contain the History of the Jews shaking off the Yoke of the Kings of *Syria*, when they were broke in upon by a Total Overthrow of their whole Law, and an unrelenting Persecution. *Mattathias* a private Priest began the Resistance which was carried on by his Children, till they shook off the *Syrian* Yoke, and form'd themselves into a free Government, under the Family of the *Maccabees*. It were easy to shew that the Jews had been for above 400 Years subject, first to the *Babylonian*, then to the *Persian*, and at last to the *Grecian* Empire: So that by a long Prescription they were Subjects to the Kings of *Syria*. It were easy also to shew, that this Resistance was foretold by *Daniel*, in Terms of high Commendation, and is also mention'd in the Epistle to the *Hebrews*, as the Work and Effect of their *Faith*. If then all Resistance to illegal and barbarous Persecution is unlawful; these Books contain nothing but a History of Rebellion, and all the Devotion that runs thro' them, is but a Cant, and instead of reading them as *Example of Life*, and *Instruction of Manners*, we ought to tear them out of our Bibles with Detestation. I shall afterwards shew what use was made of these Books, not only by private Writers of our Church, but by what the whole body in Convocation was about to determine.

The next Step to be made, is, to consider the Homilies: The Second Book of Homilies, which has the Homilies in it against *Wilful Rebellion*, is generally believed to have been compos'd by Bishop *Jewell*, who was by much the best Writer in that time. It is certain, he understood the meaning of them well: Now I will read you two Passages out of his Defence of his Apology for the Church of *England*; from whence we may clearly gather what his Notion of Rebellion was, and
that

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that he thought a Defence against unjust and illegal Violence was not Rebellion. In one place he has these Words ;

The Nobles of Scotland neither drew the Sword, nor attempted War against the Prince: They sought only the Continuance of God's undoubted Truths, and the Defence of their own Lives against your barbarous and cruel Invasions: They remember'd, besides all other Warnings, your late Dealings at Vassy, where great Numbers of their Brethren were murder'd, being together at their Prayers in the Church, holding up their Innocent Hands to Heaven, and calling upon God. In another place he writes, Neither do any of all these (Luther, Melancthon) teach the People to rebel against their Prince, but only to defend themselves by all lawful Means against Oppressions; as did David against Saul, so do the Nobles in France to this Day, they seek not to kill, but to save their own Lives.

These Passages shew that he look'd on Rebellion to be a violent Rising against a Prince executing the Laws; which was the Case of the Three rebellions in *England* that they had in view: That in King *Henry* the VIIIth's, in King *Edward's*, and in Queen *Elizabeth's* Time, where the Papists took Arms against their Prince, who was executing Laws made in Matters of Religion, and that with a great Gentleness. Of the Eleven Passages quoted by the Prisoner out of the Homilies, Five plainly relate only to the Coercing the Person of the Prince, in which *David* is set in Opposition to those Rebels: Now, tho' he indeed defended himself, yet he had a just and sacred Tenderness to the Person of *Saul*, when he had him in his Power, which is certainly sacred by our Constitution. Five of them relate to wicked Princes. It was never pretended by any who pleaded for Necessary Defence, that the bad Life of a Prince can be a just Cause of Resistance: Yet that was then pretended; for *K. Henry VIII*, had given too much occasion to reckon him a wicked Prince. So there is only one of all the
Passages

Passages quoted from those Homilies, that relates simply to Rebellion in general: And it has appear'd what Bishop *Jewell's* Sense of the Matter was. There is also a Prayer at the end of every Division of the Homily against *Wilful Rebellion*, (and by the by *Wilful* was not put in the Title for nothing) for those oppress'd by Tyranny in other Parts, that they might be relieved, and that those who were in fear of their Cruelty might be comforted.

Let us next look thro' Queen *Elizabeth's* Long and Glorious Reign, and see what was the constant Maxim of that Time.

The Year after the Queen came to the Crown, the War in *Scotland* broke out between the Queen Regent that govern'd by Commission, from her Daughter then Queen of *France*, and the Lords in *Scotland*. She, to obtain the Matrimonial Crown to be sent to *Francis II.* gave Assurances for the Exercise of the Reformed Religion; but the Point being gain'd, she broke all her Promises, and resolv'd to force them to return to the Exercise of the Popish Religion. Upon which the Lords of *Scotland* formed themselves into a Body, and were called the Lords of the Congregation. Forces were sent from *France* to assist the Queen Regent; Upon that Queen *Elizabeth* entered into an Agreement with the *Scottish* Lords, and sent an Army to their Assistance, which continued in *Scotland* till all Matters were settled by the Pacification of *Leith*: And in a *Manifesto* that I have in my Hands, set forth 25 Years after that, I find her reflecting on that Interposition in the Affairs of that Nation, with great Satisfaction.

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The Year after this War was ended, upon *Francis* the III'd's Death, *Charles* the IXth, who was a Child, succeeded in *France*. Edicts were granted in Favour of the Protestants: These were soon after broken by the Triumvirat, and upon that follow'd a Series of Wars often pacified, but always breaking out again, by reason of the Violence and Cruelty of the Government. All these Wars, till *Henry* the IVth was settled on the Throne,

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Throne, were in a Course of 28 Years, that which some would call *Rebellion*, being carried on against two succeeding Kings. Yet the Queen was in all that time still assisting them with Men and Money.

In the Year 1568, the Provinces in the *Netherlands* threw off the *Spanish* Yoke, that was become severe and cruel. The Queen for some Years assisted them more covertly; but when the Prince of *Orange* was kill'd, and they were in danger of being over-run, she took them more openly into her Protection; and by the *Manifesto* which I have in my Hands, she publish'd the Grounds upon which she proceeded. She laid down this for a Foundation, That there had been an ancient League not only between the Crown of *England*, and the Princes of the *Netherlands*, but between the Subjects of both Countries, under their Seals interchangeably, for all friendly Offices.

Upon King *James's* coming to the Crown, the first Negotiation was for a Peace between *Spain* and the *United Provinces*, which lasted several Years. The States insisted on a Preliminary, That they should be acknowledged Free, Sovereign and independent States; the *Spaniards* would not yield to this, nor would the States recede from it. Some here in *England* began to say, They were form'd in Rebellion, and ought not to carry their Pretensions too far. Upon that, King *James* suffer'd a Convocation to meet; and a Book of Canons, with relation to the supreme Authority, was prepar'd; in which, tho' the Authority of the Prince, even when he becomes a Tyrant, is carried very far; yet the Case of the *Maccabees* is stated; and it was determined, That when a new Government, tho' begun in a Revolt, is come to a thorough Settlement, it may be own'd as Lawful. King *James*, who was jealous enough of the regal Authority, yet did not like their carrying these Matters so far. He order'd the whole Matter to be let fall so entirely, that there is not a Word of it in the Books of Convocation:

But

But Archbishop *Sancroft* found this Collection of Canons at *Durham* under Dr. *Overhall's* Hand, which he copied out, and licenced the Book a few Days before he fell under his Suspension. I soon saw that it had a Relation to the Affairs in *Holland*; for the *Dutch* delighted to compare their first Beginnings to those of the *Jews* in *Antiochus's* Time. They compared King *Philip* to *Antiochus Epiphanes*, and the Prince of *Orange* to *Judas Maccabeus*: But I saw much clearer into the Matter by an Original Letter of King *James*, which a worthy Gentleman sent me. I knew his Hand well, the Letter is in Print; but I will read the Particulars out of it. It is directed to Dr. *Abbot*, afterwards Archbishop of *Canterbury*. It begun with censuring some Positions concerning a King in Possession, the same with our modern Term of a King *de facto*. He goes on in these Words, *My Reason of calling you together, was to give your Judgment, how far a Christian, and a Protestant King, may concur to assist his Neighbours to shake off their Obedience to their own Sovereign, upon the Account of Oppression, Tyranny, or what else you like to name it. In the late Queen's Time, this Kingdom was very free in assisting the Hollanders both with Arms and Advice; and none of your Coat ever told me, that any scrupled about it in her Reign. Upon my coming to England, you may know it came from some of your selves to raise Scruples about this Matter; yet I never took any Notice of these Scruples, till the Affairs of Spain and Holland forced me to it. I call'd my Clergy together, to satisfy not so much me, as the World about us, of the Justness of my owning the Hollanders at this Time. This I needed not to have done, and you have forced me to say, I wish I had not. He reflects on those who had a great Aversion to the Notion of God's being the Author of Sin, which plainly points at Dr. *Overall*, who was the first Man of Note among us, that opposed the Calvinists Doctrine of Predestination; yet he says, They had gone to the Threshold of it, by saying,*
That

That even Tyranny was God's Authority, and should be revered as such. He concludes, *These were edg'd Tools, and that therefore they were to let them rest.* Here is a full Account of King James's Thoughts of this Matter, which was then the chief Subject of Discourse all Europe over. He had Twelve Years before this, shewed on an eminent Occasion, that he owned the States, when he invited them in the Year 1593. to Christen his Eldest Son, Prince Henry. They were sensible of the great Honour done them by it; and tho' they were then but Low, they sent an Embassy, with a noble Present of Gold Plate, to assist on that Occasion. This Negotiation stuck for several Years, the Spaniards refusing to own them in Express Words: The Temper found was, they were treated with (*tanquam*) as with Free States; and the Matter went no further at that time, than a Truce for some Years, which was concluded in the Year 1609. This lets us see, That the Words in King James's Speech that Year to his Parliament, were not chance Words that fell carelessly from him, *A King leaves to be a King, and degenerates into a Tyrant, as soon as he leaves off to govern by Law: In which case the King's Conscience may speak to him, as the poor Woman to Philip of Macedon, Either govern by Law, or cease to be a King.*

My Lords, You see how this Matter stood during King James's Reign. In the first Year of King Charles's Reign, Grotius's Book *de Jure Belli & Pacis*, was published at Paris, dedicated to the King of France, while France was under the Administration of the wisest and most jealous Minister of the last Age, Cardinal Richelieu. In that Book, in which he asserts the Rights of Princes, with great Zeal, yet he enumerates many Cases, in which it is Lawful to resist, particularly that of a total Subversion: And that Book is now all Europe over in the highest Reputation of any Book that the Modern Ages have produc'd. In the beginning of King Charles's Reign, a War broke out in France, against the

Protestants; upon which he sent over Ambassadors, by whose Mediation a Peace was concluded; but that being ill kept, the War broke out again; and the King thought himself bound by his Mediation to protect the Protestants. So in the Second Session of the Parliament, 1621. in the Demand of a Supply that the Lord Keeper *Coventry* made in the King's Name, these Words are to be found, *France is sway'd by the Popish Faction; and tho' by his Majesty's Mediation, there were Articles of Agreement between that King and his Subjects, that Treaty had been broke, and those of the Reformed Religion will be ruined without present Help.* Upon this the Commons petitioned the King for a Fast, and desired the Concurrence of the Lords, who join'd with them in it. The King granted it, and an Office was compos'd suitable to the Occasion; in which, among other Devotions, the Nation was directed to pray for all those, *who here or elsewhere were fighting God's Battles and Defending his Altars.* Thus the whole Body of the Legislature did concur for a Fast for that, which, if this Doctrine is true, was no better than Rebellion; and yet the whole Nation, Clergy and Laity, were requir'd to pray for Success in it.

But to complete this View of the Doctrine of our Church, it is to be consider'd, That when a Year before this, while the Loan or Benevolence were carried on, some officious Divines made use of those Expressions of Kings having their Power from God, as importing an Authority of a Nature superiour to the Laws of the Land. One of these, Dr. *Manwaring*, was Impeached, and had a severe Sentence pass'd on him for it. So I have now made it out, beyond, I hope, the Possibility of Contradiction, that for Seventy Years together, from 1558, to 1628, the Lawfulness of Self-defence in the Case of illegal and violent Cruelty, was the publick and constant Doctrine of this Church.

These were the best and happiest Times of our Church, as is often repeated by the Earl of *Clarendon*.

rendon: From these we ought to take the Standard of our Doctrine.

I go next to shew what was the common Doctrine for the next Sixty Years; from 1628; to 1688. I must yield up the first twelve Years: For upon the unhappy Misunderstanding between the King and that Parliament, there was a long Discontinuance of Parliaments, then the lately condemned Doctrine was again in Vogue; and nothing was so much heard of, as the Law of Government that was from God, antecedent to all Human Laws: Out of this sprung illegal Imprisonments, illegal Monopolies, severe Proceedings in the Star-Chamber, but above all, the Ship-Money. These things put the Nation in an Universal Dis-jointing and Feebleness. And when an unavoidable Necessity forced that King to call a Parliament, the fatal Effects of those Counsels broke out terribly. I know many fancy, that the War is to be charged on the Principles of Self-defence: They are much mistaken. I had occasion to see a great way into the Secret of that time, when I examin'd the Papers relating to the two Dukes of *Hamilton*: I knew a great deal more since from two Persons of unquestionable Integrity, who knew the Secrets of that time, the Lord *Hollis*, and Sir *Harbottle Grimstone*; but all receiv'd a full Confirmation, when I found it agreed perfectly with the noble Account given by the Earl of *Clarendon*.

No body dreamt of a War, nor had they any Principles leading to it. But there was an unhappy Train of Accidents that hindred Matters from being brought to a Settlement, even while the King was granting all they could desire. Stories were carried by Persons about both the King and Queen, of Words let fall, that made them conclude, there were still ill Designs on Foot, against the Laws that were then passed. But that which brought all to a Crisis, was the Discovery of a Negotiation, to engage the Army to declare against the Parliament. Whosoever compares the Depositions in *Rushworth*, with the

the Account given of that Matter by the Earl of *Clarendon*, will see there is a great deal more in the one, than the other is willing to believe; tho' he acknowledges they had both *Goring's* Evidence, and *Piercy's* Letter with them. I will not take it upon me to determine, whether they believ'd too much, or the Earl of *Clarendon* too little.

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Thus the true Occasion of the War, was a Jealousy, that a Conduct of 15 Years had given too much ground for; and that was still unhappily kept up, by a fatal Train of Errors in every step that was made. The great Concussion that the War gave the Nation, and the barbarous Effusion of so much Blood, especially of the Royal Blood of that Blessed KING, had at last a happy, tho' a late Conclusion in the *Restoration*: And it's no wonder, if such a Series of Tragical Events, begot a General Horror at the Occasion of them. But then it was, that had it not been for the Firmness of the Earl of *Clarendon* to his *English* Principles, the Liberties of the Nation had been deliver'd up.

It is to his Memory, that we owe our being a free People; for he with his two great Friends, the Duke of *Ormond*, and the Earl of *Southampton*, check'd the Forwardness of some who were desirous to load the Crown with Prerogative and Revenue. He stopt all this, which being afterwards odiously represented, brought on him that great and lasting, but honourable Disgrace. The Earl of *Southampton*, whose Death went a little before his Fall, and perhaps hasten'd it the sooner, said to many about him, that he was a true Protestant, and an honest *Englishman*; and that the Nation would feel the Effects of his being removed, whensoever it might happen,

That Lord, in the great Settlement after the *Restoration*, would carry things no farther than to repeal what had been extorted by the Tumults; and in the matter of the Militia-Act, and the Oaths relating to it, all was more cautiously worded than is commonly understood. To the

Word *Commission'd by the King*, some indeed moved, that the Word *Lawfully* might be added, to make all plain. This was press'd in the House of Commons by *Vaughan*, afterward Lord Chief Justice of the Common-Pleas. The Attorney General, afterwards Lord Chancellor *Nottingham*, answer'd, That was not necessary, for the Word *Commission* imported it; since, if it was not Lawfully issued out, to Lawful Persons, and for a Lawful Reason, it was no *Commission*; and the whole House assented to this: Yet in the House of Lords, the same Word *Lawfully* was press'd to be added by the Earl of *Southampton*, who was answer'd by the Earl of *Anglesey*, to the same purpose with what had been said in the House of Commons. He indeed insisted to have the Word added, because it would clear all Difficulties with many, who not having heard of the Sense given in both Houses, might fancy, that any sort of *Commission* being granted, it would not be Lawful to resist it. He did not prevail; for it was said, That this Explanation being the Sense of both Houses, it would be soon spread and known over the Nation. In this Sense, it is certain, that it is not lawful to take Arms against any so commission'd by the King; for that were to take Arms against the King's Commission in the Execution of the Law, which is certainly a resisting the Ordinance of God, *which whosoever do, they shall receive to themselves Damnation.*

It was no Wonder, if after such a War the Doctrine of *Non-Resistance* was preach'd and press'd with more than ordinary Warmth, and without any Exceptions; yet some still kept these in view: So did both Dr. *Falkner* and myself.

I found the ill Effects that the carrying this Matter so far, had on the Mind of that unfortunate Prince, King *James*; for in the Year 1673, when he was pleas'd to admit me to much free Conversation with him, among many other things, I told him, it was impossible for him to reign in quiet in this Nation, being of that Religion: He answer'd me quick, Does not the Church of
England

England maintain the Doctrine of *Non-Resistance* and *Passive Obedience*? I begg'd of him not to depend on that; for there was a Distinction in that matter, that would be found out when Men thought they needed it. I now come to tell your Lordships, how right I judged.-----

It is true, they pass'd a very pompous Decree at *Oxford* 1683. but you shall hear how long they stood to it. In Summer, 1686, the Prince of *Orange* was pleas'd to receive me into his Service with a particular Confidence. Soon after the Ecclesiastical Commission was set up, and upon some Proceedings before that Board, he was desir'd from *England* to break with King *James* upon that Head. I oppos'd this, and said, I was convinced, that Commission was against Law, and would have ill Effects, but it did not strike at the Whole. This was more warmly press'd upon the Proceedings against *Magdalen College*. I still stood to my Ground; and told both Prince and Princess, That if a Breach should follow on these Matters, I could not serve. When indeed the Declaration was publish'd a second time, with a Resolution to have it carried thro'; and that many Laws were dispensed with at pleasure; and Persons who were under legal Disabilities, were made Judges, Sheriffs and Magistrates; all whose Actings were so many Nullities: Then I thought here was a total Subversion of our Constitution; which from being a Legal one, was made precarious, subject to mere Will and Pleasure. So I was ready to serve in the Revolution.

Some Days after we came to *Exeter*, Sir *Edward Seymour* came thither, and he presently sent for me: When I came to him, he asked me Why were we a Rope of Sand, and had not an Association? I said, Because we had not yet a Man of his Weight to begin the Motion: He said, if we had not one by to Morrow, he would leave us before Night. I presently saw a Noble Duke, now in my Eye, and acquainted him with this: He went to the Prince, who approving of

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it, an Association was prepar'd, and laid on the Table next Morning ; and was after that signed by all who came to wait on the Prince. Three Days after we left *Exeter*, a Head of a College came to the Prince, to invite him to come to *Oxford*, assuring him, that the University would declare for him. He went as near it as *Abingdon*, but then the sudden Turn of Affairs at *London* obliging him to haste up, the Association was sent thither, and was signed by the Heads of the Colleges, and many others there ; some doing it in a particular Warmth of Expression, and saying, That their Hearts as well as their Hands went with it. Upon what Disappointments or other Views, I cannot tell, this Contradiction to their famed Decree, five Years after it was made, seem'd to take another Turn back to it again ; and the Notion of a King *de facto*, which is but a softer Word for an Usurper, came in Vogue.

The Parliament, to prevent the ill Effects of that, studied to secure the Government, *First*, by an Association, and then by an Abjuration. I, who was always against every thing that might break in upon Conscience, was for making these only voluntary ; but they were Enacted, and they were generally taken. A Noble Lord on the Earls Bench, procur'd me the Sight of a Letter, that went about to persuade the taking the Abjuration, that he had from a Place where he believed it had its Effect ; where I found this Distinction, that the Abjuring any Right whatsoever that the Pretender might claim, was only meant of a Legal Right, and that it had no relation to *Birth-Right*, or to *Divine Right*. This agreed with a Report that went then current, that a Person, in a great Post, sent a Message to an Honourable Gentleman, who would not take the Abjuration, that if he had an half Hour's Discourse with him, he doubted not to be able to convince him, that he might take the Abjuration, without departing from any of his Principles. Towards the End of the last Reign, a bold Attempt was made on the King's Supremacy, by an Incendiary, who

who is supposed to have no small Share in this Matter now before your Lordships: But the Attack on the Supremacy being liable to a *Premunire*, it was turn'd with much Malice, and manag'd with great Prevarication, against the Bishops, who adhered firmly to their Duty to the King. How great a Disjointing that has brought on this Church, is too visible all the Nation over; and it tends to carry on the wicked Design of distracting the Church, and undermining the Government.

By the time the Queen was on the Throne, or soon after, the *Rehearsal* began to be spread over the Nation, two of them a Week, which continu'd for several Years together, to be publish'd without Check or Controul. It was all thro' one Argument against the Queen's Right to the Crown: That, tho' it was diversified with Incidents and Digressions, was kept always in view. The Clergy were in many Places drawn into Subscriptions for this Paper. This look'd like a Design long conniv'd at, to have the Queen's Title undermin'd: Besides this, we had a swarm of Pamphlets every Year to the same Purpose, and, as was believed, writ by the same Hand. One sold at the Door of the House, with the Title of King *William's Exorbitant Grants*, did plainly call him an Usurper: and starting an Objection against the Queen's possessing the Throne, gave it this Answer, That she did well to keep it till she could deliver it up to the righteous Heir. At that time there was quick Prosecution of a Paper publish'd, with the Title of *The Shortest Way with the Dissenters*; and upon that, I brought that Pamphlet to a great Minister, and offer'd to shew him this Passage in it, to see if there should be a Prosecution of this order'd. He turn'd from me; so whether he heard me or not, I cannot tell: I am sure, if he says he did not, I will believe him. No Prosecution follow'd, and the *Rehearsal* went on. The Clergy in many Places, met at a Coffee-House on *Saturdays*, to read the *Rehearsals* of the Week, which had very ill Effects.

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in most Places. I know it may be said, That the Queen's Learned Council ought to have look'd after these things: But we all know, that they stay till they receive Orders from the Ministry. The Course of that Treasonable Paper has been now for some time stopt, so we see there is some Change in the Ministry.

But to compleat the Insolence of the Enemies of the Queen and of the Protestant Succession, they had the Impudence to give it out; That the Queen secretly favour'd them. And as this, we all know, has been long whisper'd about among us, so it was more boldly given out in *Scotland*; which oblig'd one of the Queen's Ministers in that Parliament, in a Speech that was printed, to contradict this treasonable and dishonourable Suggestion, That as some Divines would have it, that there was in God a Secret as well as a reveal'd Will, and that these might be contrary to one another; so they would fasten an Imputation on the Queen, that while she reveal'd her Will one way, she had a secret Will another way; which he solemnly affirmed to be false, and highly injurious to the Queen.

While the Pamphlets and these Reports were thus set about, Mr. *Hoadly* thought that it became him to assert the Queen's Title, by justifying the Revolution, out of which it rises. But what an Outcry was rais'd on this, that one durst disturb the Progress of a wicked Opinion, that was visibly design'd to overturn the Government: And yet he asserted nothing, but what the Counsel for the Prisoner did all fully and plainly own, That in the Cases of extreme Necessity, an Exception to the Doctrine was to be admitted, and that that was the Case at the Revolution.

But as these Notions have been long let run among us, so they have appeared in a most violent and unguarded Manner, ever since the Attempt of the Pretender; and more of late, since the Preliminaries upon the Overtures for a Peace, seem to extinguish their Hopes. What Sermons on this Head are preach'd in this City, at Assizes, at
Bath,

Bath, and at many Cathedrals? Furious Men fit themselves with some hot Sermons, which they carry about from Place to Place, to poison the Nation. This has not only the visible Effect designed by it, of shaking many in their Allegiance to the Queen, and in their adhering to the Protestant Succession; but it has a cursed Effect on many others, on whom this their Design does not succeed.

I am very sensible there is a great deal of Impiety and Infidelity now spread thro' the Nation: This gives every good Mind all possible Horror; but I must tell your Lordships, on what a great Part of it is founded: for since my Conversation with *Wilmot*, Earl of *Rocheſter*, I have had many Occasions to discourse with Persons tainted with those wicked Principles; and I do affirm it, that the greatest Prejudice these Persons have at Religion, at the Clergy, and at the publick Worship of God, is this, that they say, They see Clergymen take Oaths, and use all Prayers, both ordinary and extraordinary, for the Government, and yet in their Actions and Discourses, and of late in their Sermons, they shew visibly that they look another Way: From whence they conclude, They are a mercenary Sort of People without Conscience.

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I hope there are not many that are so corrupted and so scandalous: I am sure I know a great many that are far otherwise, who preach, speak and act as they swear and pray; but those who act in another way, are noisy and impudent, and so bring an Imputation on the whole Body. And unless an effectual Stop is put to this Distemper, it is not possible to foresee all the ill Consequences that may follow upon it.

I have, I am afraid, wearied your Lordships; but I thought it was necessary, once for all, to enlarge copiously on this Argument. And now to come close to the Article, and the Sermon, for I meddle not at all with the Person of the Man, whatever general Expressions might very well have been used, in setting forth *Passive Obedience* and

only to be Subjects of the Arbitrary Wills, the slavish Instruments in the gratifying the ambitious or other corrupt Designs, of any one or more Men ; but for the Safety and Prosperity of the whole Community.

2. That in the Holy Scriptures (as far as I can find) there is no Specification of any one particular Form of Government to which all Nations and Bodies of Men, in all Times and Places ought to be subject ; nor are there any such exact Accounts of the Extent of the Power of the Governor, or Obedience and Submission of the Governed, as can reach to all Cases that may possibly happen.

Page 656. There are many general Precepts requiring the Obedience and Submission of Subjects to their Governors : *Let every Soul be subject to the Higher Powers : You must needs be subject not only for Wrath, but also for Conscience-sake : He that resists, resists the Ordinance of God : And submit yourselves to every human Constitution for the Lord's Sake, &c.*

But yet these Scriptures do not tell us how far we must obey and be subject, nor do they necessarily imply that there can never be any Cases wherein we may not obey and not be subject, but resist ; because there are other Places in Scripture, where other Duties are requir'd in Terms as large and general as these, nay in universal Terms, which yet must admit of Exceptions.

Some of the most zealous Contenders for the absolute Power of the Prince, and unconditional Submission of the Subject, found themselves very much upon the fifth Commandment, *Honour thy Father and Mother*, which they expound as comprehending political as well as natural Parents ; and I do not gain-say it : But then pray, my Lords, let us see in what Terms the Duty of Children to their natural Parents is requir'd in Scripture : *Children*, says the Apostle, *obey your Parents in all Things*. This Expression is surely universal enough ; and from hence, according to some Mens Reasoning, it must follow, if Children must obey their Parents in all things, then they may resist in none. But

But will any body say, that notwithstanding the Universality of this Precept, there may not be some Exceptions and Limitations understood, both as to the active and passive Part of the Child's Obedience? As to the active, no one will deny, but the Command must be restrain'd to *Licita & Honeſta*; they are not to obey in all things absolutely, but in all things that are lawful and honeſt.

I do allow, that in all Governments whatsoever there is an absolute Power lodg'd somewhere, With us, as I humbly conceive, that Power is lodg'd in the Legislature; for which I have the Authority of a great Politician and Statesman, Sir *Thomas Smith*, who was Secretary of State to two Princes, King *Edward VI.* and Queen *Elizabeth*; who in his Book, *De Republica Angl.* a Book ſeen and allow'd, as is ſaid in the Title-Page, in that Chapter where he treats of our Parliaments, and the Authority thereof, lays down this Affertion, '*The moſt high and absolute Power of the Realm of England conſiſteth in the Parliament.*' And giving particular Inſtances of that Power, among others, mentions this, '*That the Parliament gives Forms of Succeſſion to the Crown.*'

The executive Power with us is lodg'd with the Prince; and I do readily allow, that the Prince ſo veſted with the executive Power, and all others lawfully commiſſion'd by him, acting according to their Commiſſion, and within thoſe Laws with the Execution whereof he and they are reſpectively truſted, are irreſiſtible: The Perſon of the Prince is always inviolable; no perſonal Faults in him; no Injuries to particular Perſons, where they can have no Redreſs by Law, as in ſeveral Caſes they may have; no general Malediſtration, whereby the Publick may be greatly hurt, can juſtify any forcible Reſiſtance of his Subjects; nor any thing elſe than a total Subverſion of the Conſtitution.

But if in a legal Monarchy, where ſuch Laws have been enacted by common Conſent of Prince
and

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and People, as are to be the Measures of his Government, as well as of their Obedience, that limit his Power, as well as secure their Rights and Properties, the Prince shall change this Form of Government into an absolute Tyranny, set aside those Laws, and set up an Arbitrary Will in the room of them. When the Case is plain, and when all Applications and Attempts of other Kinds prove unsuccessful; if then the Nobles and Commons join together in defence of their antient Constitution, Government and Laws, I cannot call them Rebels. Allow me, my Lords, to lay before you a few things in maintenance of what I have advanced. And,

1. I would humbly offer some Facts, which I allow do not directly prove what I have said to be true, but they do prove it to have been the Opinion of our Princes, Parliaments, Clergy and People, in the Reigns of those three great Princes, Queen *Elizabeth*, King *James* and King *Charles I.* I mean the Assistances which those Princes gave to the Subjects of other Countries that were resisting their respective Princes; and to enable them to do so, they had Subsidies given them in Parliament and Convocation -----, and there were Prayers compos'd and used for the Success of their Arms.

Surely, my Lords, if those Princes, Parliaments, Clergy and People, had been of Opinion, that the Resistance of Subjects against their Princes was in no case lawful, but always damnable Rebellion; they would never by aiding and assisting such Rebels, have involv'd themselves in the Guilt, and expos'd themselves to the dangerous Consequences of such a Sin. I mention not the particular Stories, because they are better known to your Lordships than to me, and because I doubt not but in the Course of this Debate, some Lord or other will give a larger Account of them. But I cannot forbear observing one thing relating to that Assistance, which that pious Prince, and now glorious Saint in Heaven King *Charles I.* gave to the *Rochellers*, who were surely the Subjects of the

the King of *France*: He order'd a Fast by Proclamation, and appointed a Form of Prayer to be drawn up for the imploring of God's Blessing. It is highly probable, that Bishop *Laud* had the great Hand in composing those Prayers, he being then Bishop of *London*, and in great Favour, and the Archbishop of *Canterbury*, *Abbot*, at that time in Disgrace. But whoever compos'd them, I beg leave to read part of one of the Collects in that Office: '*O Lord God of Hosts, that givest Victory in the Day of Battle, and Deliverance in the Time of Trouble, We beseech thee to strengthen the Hands, and encourage the Hearts of thy Servants, in fighting thy Battles, and defending thy Altars that are among us, and in all the Reformed Churches.*' It seems the Reformed Churches were thought to have God's Altars among them then, however they have been villify'd since. But that which I would observe from this Passage is this, That neither that excellent King who commanded those Prayers to be composed, nor the Bishops who composed them, nor the Clergy and People who used and join'd in them, could in so solemn a manner have recommended those Forces to the Divine Protection and Favour, and as such as were fighting God's Battles, if they had thought they were fighting against God in his Vice-gerent; and as defending his Altars, if they believ'd they were resisting his Ordinance.

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2. I could produce several Authorities in support of what I have laid down, but I shall mention but one: It is in a Book written professedly on this Subject, and the Passage I shall quote comes home in Point to the matter in hand. The Book was written in Queen *Elizabeth's* Time; every one that is acquainted with the History of her Reign, knows what Attempts were made by the Pope, and his Party against her Government and Life, by excommunicating, deposing her, absolving her Subjects from their Allegiance, by raising Tumults and Insurrections, by Dagger, Poison, and what not. And 'tis certain, that they

they were these wicked Practices of the Pope and his Followers, and the Doctrines by which they justified them, that the Compilers of the Homilies, which were then made, and other Authors who then wrote about the Power of the Prince and the Duty of the Subject, had principally in their View. The Book I mean, is intitled, *The true Difference between Christian Subjection and Unchristian Rebellion*. It is written by way of Dialogue between a Christian, whom the Author calls *Theophilus*, and a Jesuit whom he calls *Philander*. I beg leave to read a Quotation out of it. *Theophilus* the Christian says, *I busy not my self in other Mens Common-wealths as you (the Jesuits) do, neither will I rashly pronounce all that resist to be Rebels: Cases may fall out even in Christian Kingdoms, where the People may plead their Right against their Prince, and not be charg'd with Rebellion. Philander* the Jesuit asks, *as when for Example? Theophilus* the Christian replies thus: *If a Prince should go about to subvert his Kingdom to a Foreign Realm, or change the Form of the Commonwealth from Impery to Tyranny, or neglect the Laws establish'd by common Consent of Prince and People, to execute his own Pleasure. In these and other Cases which might be named, if the Nobles and Commons join together to defend their ancient and accusom'd Liberty, Regiment, and Laws, they may not well be accounted Rebels.* This Book is said in the Title Page, to have been perused and allow'd by publick Authority; was written by a great Man, Dr. *Bilson*, then Warden of *Winchester* College; printed at *Oxford* by the University Printer, and dedicated to Queen *Elizabeth*; and the Author was afterwards made Bishop of *Winchester*. I could offer many other Authorities, not from false Sons, or perfidious Prelates of the Church, not from Men of factious and antimonarchical Principles in relation to the State; but venerable Names, Ornaments to the Ages they lived in, and such as will be remembered with Honour in succeeding ones: But I am superceded in
pro-

producing, and your Lordships Trouble saved in hearing more particular Quotations to this purpose, by what is yielded by a Reverend Divine of great Parts and Learning, far enough from the Suspicion of being prejudiced against the Rights of Princes, or partial to those of the People, I mean the Reverend Dean of *Carlisle*, who in a *Latin* Discourse preach'd and printed in this Town upon the *Duty of Submission*, stating some Cases of extreame Necessity, and putting the Question, *Whether it may not be lawful for the People in such Cases to resist?* answers, *Viri boni & graves*, &c. 'That good and judicious Men, Men that have taken great and useful Pains in defending the Rights of Princes, and repressing popular Licence, have contended that it is lawful:' He adds indeed, 'Whether they have done right or wrong, let others judge;' and does not give his own Opinion. But since he has granted, that such Men as he has described, Men of Probity and Judgment, zealous Assertors of the Rights of Princes, and Repressors of popular Licence, have contended that in Cases of extreme Necessity it is lawful for the People to defend themselves; I may comfort my self if I err in my Opinion, that I err in good Company. But I humbly conceive I do not err, and that,

5. For this plain Reason, That if it be utterly unlawful to resist in any Case whatsoever, even that of a total Subversion of the Constitution and Laws; then there is no Distinction of Governments, of absolute, I mean, and limited; of if there be a Distinction, it is a nominal one, without any real Difference. For what Difference is there between a Prince's governing arbitrarily without Law, and governing arbitrarily against Law? betwixt having no Laws at all, and having precarious Laws that depend intirely on the Will of the Prince, whether he will observe one of them, or subvert them all; and if he does, the People cannot help themselves?

But, my Lords, I hope and believe that there is a real Distinction of Governments, and that the
Subjects

Subjects of all Governments are not in the same wretched Condition that those of *France* and *Turkey* are in. I hope we have not boasted falsely or vainly of our own Form of Government, that we are blessed with a Constitution more happy than any other Nation in the World enjoys, that allows and secures as great, and (I had almost said) God-like Powers and Prerogatives to the Crown, as any wise and good Prince can desire ; a Power of doing every thing that is good, and nothing that is ill ; and at the same time secures most valuable Rights and Privileges to the People.

What wise or good Prince would not rather chuse to reign over free Subjects, than tyrannize over Slaves ? To receive a willing chearful Obedience, proceeding from the Principles of Gratitude, Love and Interest, as well as of Duty, rather than a forced one, owing meerly to a Principle of Fear, the Principle from whence the *Indians* worship the Evil Spirits ?

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My Lords, such a Frame of Government your Lordships have receiv'd from your Ancestors ; and I hope and trust, that in grateful Respect to their Memory, and in tender regard to your Posterity, (I say nothing of ourselves, my Lords ; for as for us who have the Happiness to live under the Government of the best of Princes that ever Heaven bless'd a Nation with ; for us, I say, were our Government as arbitrary as any in the *East*, yet I should think our Rights, Liberties and Properties, and whatever is most dear and valuable to us, as safe if they depended entirely upon her Majesty's gracious Will, as they are now they are secured to us by our Laws, or stronger Fences, (if they could be made) but I speak in regard to those that are to come after us ; and I do hope and trust, that as your Lordships have receiv'd such an inestimable Treasure from your Predecessors, you will transmit it inviolable to your Posterity.

My

My Lords, I fear I tire you, but I must beg your Patience a little longer, while I express my Surprize and Wonder that the Doctrine of *Passive Obedience*, and *Non Resistance*, in the unlimited Extent in which some explain it, is so diligently inculcated, and so zealously press'd at this Time.

Passive Obedience, I own, when truly stated, is a truly Christian Duty; a perpetual Duty as to the Obligation, but occasional as to the Practice of it. Now Preachers do not usually, neglecting the pressing of other Duties of more constant Practice, lay out their Time and Labour in filling both Pages of their Discourses with earnest Assertions and violent Exhortations to the Practice of an occasional Duty, unless they have some near Prospect of an Occasion for the Exercise of it. And yet, my Lords, has this one Duty been of late more frequently and earnestly asserted and urged both from Pulpit and Press, than all the other Duties of Christianity: And what Occasion for this does any one pretend to have in View?

Can there be a Wretch so abandoned, so lost to all Sense of Gratitude and every thing that is good, as to be capable of admitting a Thought, that our gracious Queen has done, is doing, or intending to do any thing, that may give her Subjects occasion for the Practice of this Duty? Has she not ever since her happy Accession to the Throne, postponed, sacrificed her own Repose and Ease to the Quiet and Happiness of her Subjects? Has she not clearly shown that she has nothing so much at Heart, as the Good and Prosperity of her People, the true Interest and Honour of her Kingdom, which she has carried higher than any of her Royal Predecessors ever did before her? Has she not approv'd herself a true Parent of her Political Children, by exercising as prudent a Care of, and expressing on all Occasions as tender an Indulgence to them, as any natural Parents ever did towards theirs?

If then there be no Occasion from the Conduct of our Prince, is there any Reason from the Behaviour

haviour of her People that may justify this extraordinary and otherwise unseasonable Zeal for this Doctrine? Do they (excepting such as the Zealots for this Doctrine have excited to disturb her peaceful Reign at Home, by rebellious and dangerous Tumults and Insurrections) shew any Uneasiness under her Majesty's Government, or Inclinations to throw it off? Do they not bless their glorious Queen and God for her? Do they not on all Occasions express their grateful Sense of the many inestimable Blessings they enjoy thro' her Administration? Do not they constantly offer up their devout Prayers to God for her long Life and happy Reign? Do they not willingly pay their Taxes for the Support of her Government, cheerfully expend their Treasure and Blood too in Defence of it?

What then can be said for such a Conduct, which can have no other natural Tendency than to create unreasonable Jealousies of her People in the Head of our Queen, and groundless Fears of their Queen in the Hearts of her People? Jealousies in the Queen, that her Subjects are inclinable to rebel against her, when the Clergy think it necessary thus to press these Restraints upon them: and Fears in the People, when their Pastors are so industriously preparing them for Sufferings.

My Lords, I would not be thought to charge upon all that hold and assert this Doctrine, the Consequences which I may with too much Reason charge upon some of them; I mean such as do not allow her Majesty's Title to the Crown, but refuse to take the Oaths to her, or join in Prayer for her, and have upon that Account form'd one of the most unaccountable Schisms that ever was made in the Church. Some of these have engaged zealously in asserting this Doctrine; and one of them in a Paper written in Vindication of it, has not been afraid to insinuate a Parallel between the Case of *Her Majesty* and the *Pretender*, and that of *Athaliah* and *Joash*.

Horrid

Horrid Suggestion that would make one tremble! What do these Men mean? Any Service to her Majesty? No: The Consequences as to them are plain. If to resist upon any Occasion whatever be unlawful, be Rebellion, damnable Rebellion; then the Revolution was Rebellion, and all that were concern'd in it are involv'd in that Guilt; then we have continued in a Rebellion ever since; then if we would avoid Damnation, we must repent of that Sin; but there is no true Repentance without Restitution, and if there must be Restitution, they will tell you what that is.

I would charitably hope, that the unfortunate Person now in Judgment before your Lordships, did not intend to carry Matters so far: But I must say, his Doctrine as he has stated and managed it, under his Head of *False Brotherhood*, with relation to the State, does give too great a Handle for those that have such Views, to improve what he has said to their Purposes.

The Council for him, have labour'd to defend him against the Charge in this Article, by producing a great many Quotations out of the *Homilies, Statutes and Writings* of Divines dead and living, wherein this Doctrine has been laid down generally. They all allow'd that Cases of extreme Necessity were always excepted out of this general Doctrine; and that tho' the Exception was not express'd, yet it was always imply'd; and they allow'd farther, that the Case of the Revolution was a Case of such Necessity: But how did they apply this to the Case of their Client? Thus: They said, that those Divines whom they had quoted, were never found fault with for asserting the Doctrine in general Terms, not expressing but tacitly implying the Exception: Then they ask'd, Why should the Doctor be charg'd for asserting the Doctrine in general Terms, as others had done, not expressing the Exception which they had not express'd? Why should not he be intitled to the favourable Construction of

tacitly implying the Exception of Cases of Necessity, such a Necessity as they allow'd justify'd the Revolution ?

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Indeed I should have readily admitted the Plea, if the Doctor had done no more than barely asserted the Doctrine in general Terms, and his only Fault had been that he had not expressed the Exception which he tacitly imply'd : But has he done no more than this ? Has he not mention'd the Case of the Revolution, with no other View, as I can see, than to expose it ; not as an Exception out of his general Position, but an Objection against it ? Our Adversaries, says he, that is, those that oppose his general Doctrine, think they have us sure, *i. e.* effectually confute that Doctrine, by objecting the Revolution. This Objection must suppose that there was Resistance at the Revolution ; for to say that the general Doctrine, that it is not lawful in any Case to resist, is not true, because the Revolution was lawful, in which there was no Resistance, would be a wonderful Objection indeed : I say, Resistance must be suppos'd in the Objection, to make Sense of it. How then does he solve this Objection ? Does he say the general Doctrine always implies an Exception of Cases of Necessity ? That the Revolution was a Case of such Necessity, and therefore that Necessity justify'd the Resistance at the Revolution ? No, but by advancing a strange Position (which he proves by as strange a Medium) *viz. That there was no Resistance at the Revolution* : plainly implying, that if there was Resistance at the Revolution, which every body knows there was, the Revolution stands condemned by his general Doctrine. So that I cannot see that his learned Council, who wanted neither Abilities nor Inclinations to serve him, have at all defended him against the Charge in this Article. But this they have effectually done, they have given up his general Doctrine, if it admits of no Exceptions ; and thereby clear'd the Revolution and the necessary Means whereby it was brought about

bout, from those black and odious Colours which he endeavour'd to cast upon them.

After all, I can truly appeal to my own Heart, and a greater than it, the Searcher of it, that I am not any ways prejudiced against the Person of the unhappy Prisoner, but rather in Favour of him, as I am of all Men in his suffering Circumstances, by a natural Tenderneſs (it may be a Weakneſs) but ſuch a one as I cannot help, which never ſuffers me, however obliged in Juſtice to it, to do a hard Thing to any one however deſerving it, without doing at the ſame time a hard Thing to myſelf: And if your Lordſhips ſhould be of Opinion in the Conclusion of this Trial, That the Commons have made good their Charge againſt him, I am ſure I could come into as eaſy a Sentence upon him as may be conſiſtent with the Honour and Juſtice of your Proceedings, and with that which I take to be the chief End in all Punishments, not ſo much the hurting the Offender, as the preventing the like Offences, and hindring others from committing them for the future.

But ſtill, my Lords, there is ſurely a Tenderneſs and Compaſſion due to our Queen, our Country, and our Poſterity; all which, I humbly apprehend, are highly concern'd in the Iſſue of this Affair.

If Clergymen may with Impunity publickly in their Sermons arraign and condemn the Revolution: Beſides the Reflections they caſt upon all the worthy Patriots that were concern'd in that great Work, the Commonalty, Gentry, and Nobility, Lords upon every Bench in this Houſe; beſides this, it muſt ſhake, it muſt ſap the very Foundation of our preſent Eſtabliſhment, as it ſtands upon the Foot of the Revolution, and utterly deſtroy our future Hopes in the Proteſtant Succeſſion, which is founded upon that Bottom only.

My Lords, I muſt humbly aſk Pardon for having treſpaſs'd ſo long upon your Patience, and will conclude with this one Word, That in my Opi-

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nion, *these Practisings of Clergy-men (to use the Expression of a great and eminent Prelate) in State Matters, are of that dangerous Tendency and Consequence, that if there be not some effectual Stop put to these Practisings, these Practisings will, in time, put an effectual End to our Constitution.*

The Commons had therefore Reason to bring this Matter in Judgment before your Lordships, and I think they have fully made good their Charge in the first Article of their Impeachment against Dr. Sacheverell.

The Bishop of Lincoln's Speech in the House of Lords, March the 17th, at the opening of the second Article of the Impeachment against Dr. Sacheverell.

My LORDS,

IT was the Misfortune of some of our Bench, that in the Prosecution of the foregoing Article of this Impeachment, a Noble Lord, who spoke very early to that Point, was pleased not only to anticipate our Judgment in that Particular; but to do it with this pretty hard Reflection, That in giving it, as he suppos'd we would, we should vote contrary to our own Doctrine. It is not improbable but that, in the Course of the present Debate, another Arrow may be drawn out of the same * Quiver to shoot at us; and we may be told, that in defending of the † Toleration granted by Law to the Dissenters, we shew ourselves to be Apostates from our own Order. But from both these Imputations I am persuaded both our Writings, and our Actions, will secure us in the Judgment of all indifferent Persons.

The Substance of this Second Article of the Impeachment, which your Lordships are now about to enter upon, is this: *'That Dr. Sache-*
verell

* See Dr. Sacheverell's Answer to the 1st Article of Impeachment. His Speech, Fol. Pag. 23.

† Dr. Sacheverell's Sermon at St. Paul's, Pag. 8.

‘ verell in his Sermon doth suggest and maintain,
 ‘ that the Toleration granted by Law is unrea-
 ‘ sonable, and the Allowance of it unwarranta-
 ‘ ble. That he is a False Brother with relation
 ‘ to God, Religion, or the Church, who defends
 ‘ Toleration, and Liberty of Conscience. That
 ‘ Queen Elizabeth was deluded by Archbishop
 ‘ Grindal to the Toleration of the Genevian Dis-
 ‘ cipline: And that it is the Duty of superior
 ‘ Pastors to thunder out their Ecclesiastical Ana-
 ‘ themas against Persons entituled to the Benefit
 ‘ of the Toleration; and insolently dares or de-
 ‘ fies, any Power on Earth to reverse such Sen-
 ‘ tences.’ This, my Lords, is the Sum of this
 part of the Commons Charge against Dr. Sache-
 verell, and I think the Managers have fully made
 it out; not by bare Intendments, by unnecessary
 Implications, and forced Constructions; not by
 piecing together broken Sentences, and conjoining
 of distant, and independent Passages (as he has
 unjustly complain’d;) but by the plain Words,
 and necessary Meaning, of a very great part of his
 Discourse.

Page 66o.

But before I trouble your Lordships with the
 Proof of this, give me leave, upon this Occa-
 sion (tho’ it be no part of the Impeachment laid a-
 gainst the Preacher) to observe to your Lord-
 ships what a strange Account he has thought fit
 to publish of that other popular Engine, which,
 he says, has been made use of * to pull down the
 Church, and which he calls by the Name of Com-
 prehension.

The Person who first concerted this supposed
 Design against our Church, was the late most
 Reverend Dr. *Sancroft*, then Archbishop of *Can-*
terbury. The Time was towards the End of that
 unhappy Reign, of which so much was said up-
 on the Occasion of the foregoing Article. Then,
 when we were in the height of our Labours,

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de-

* *Serm.* pag. 16, 17.

defending the Church of *England* against the Assaults of Popery, and thought of nothing else; that Wise Prelate foreseeing some such Revolution as soon after was happily brought about, began to consider how utterly unprepared they had been at the Restoration of King *Charles II.* to settle many things to the Advantage of the Church; and what a happy Opportunity had been lost for want of such a previous Care, as he was therefore desirous should now be taken, for the better and more perfect Establishment of it. It was visible to all the Nation, that the more moderate Dissenters were generally so well satisfied with that Stand which our Divines had made against Popery, and the many unanswerable Treatises they had publish'd in Confutation of it, as to express an unusual Readiness to come in to us. And it was therefore thought worth the while, when they were deliberating about those other Matters, to consider at the same time what might be done to gain them, without doing any Prejudice to ourselves.

The Scheme was laid out, and the several Parts of it were committed, not only with the Approbation, but by the Direction of that Great Prelate, to such of our Divines as were thought the most proper to be intrusted with it. His Grace took one Part to Himself: Another was committed to the then Pious and Reverend † Dean, afterwards a Bishop, of our Church. The reviewing of the daily Service of our Liturgy, and the Communion-Book, was referr'd to a select Number of excellent Persons, ** two of which are at this time upon our Bench: and I am sure will bear Witness to the Truth of my Relation. The Design was, in short, this: To improve, and, if possible, to enforce our Discipline; to review,

† Dr. Patrick, Bishop of *Ely*.

• ** The Archbishop of *York* and Bishop of *Ely*.

and enlarge our Liturgy ; by correcting of some things, by adding of others ; and if it should be thought advisable by Authority, when this Matter should come to be legally consider'd, first in Convocation, then in Parliament, by leaving some few Ceremonies, confess'd to be indifferent in their Natures, as indifferent in their Usage, so as not to be necessarily observ'd by those who made a Scruple of them ; till they should be able to overcome either their Weaknesses or Prejudices, and be willing to comply with them.

How far this good Design was not only known to, but approved of by, the other Fathers of our Church, that famous Petition, for which Seven of them were sent to the *Tower*, and which contributed so much to our Deliverance, may suffice to shew. The '*Willingness there declared of coming to such a Temper as should be thought fit with the Dissenters, when that Matter should be consider'd, and settled, in Parliament and Convocation ;*' manifestly referr'd to what was then known to several, if not all of the Subscribers, to have been at that very time under Deliberation. And that nothing more was intended than I have before said, is as evident from what was publicly declared in a Treatise purposely written to recommend the Design, when it was brought before the two Houses of Parliament, in the beginning of the late Reign ; and Licensed by the Authority of a Noble Peer, now present, who was at that time Secretary of State : In the very Beginning of which there is this remarkable Passage, which I shall beg leave to read to your Lordships : ** '*No Alteration, that I know of, is intended, but in things declared to be alterable by the Church itself. And if Things alterable be altered upon the Grounds of Pru-*

** A Letter to a Member of Parliament in favour of the Bill for uniting Protestants. Licensed by the Command of the Earl of *Shrewsbury*, April 1. 1689. *Jo. Venn*. Pag. 2.

'dence and Charity; and Things defective be supplied; and Things abused be restored to their proper Use; and Things of a more than ordinary Composition, revised and improved; whilst the Doctrine, Government and Worship of the Church remain intire, in all the substantial parts of them; we have all Reason to believe that this will be so far from injuring the Church, that, on the contrary, it shall receive a very great Benefit by it.'

And now, my Lords, let any impartial Person consider, what was there in such a Design that could be justly esteem'd prejudicial to the Constitution of our Church? Wherein would our Canons have suffer'd, if those already made, had been more strongly enforced; and some new ones had been added, for the Reformation of Manners; for the better punishing of notorious Offenders; and to render our publick Discipline more strict, and severe? This we have been wishing for, ever since the Reformation. What harm would it have done our Church had it now been effected? Or how would our excellent Liturgy have been the worse, if a few more doubtful Expressions had been changed for plainer and clearer; and a Passage or two, which however capable of a just Defense, yet in many Cases seem harsh to some even of our own Communion, had either been wholly left at Liberty, in such Cases, to be omitted altogether; or been so qualified as to remove all Exception against them in any Case. If such Collects, as are not yet adapted to the Festivals, or Gospels, to which they belong, had been made more full, and apposite to both; if some of the occasional Offices had been enlarged, and new ones added: If, for Example, there had been a greater variety of Prayers, Psalms, and Lessons appointed by Authority, instead of the Compositions of private Persons, now necessarily to be used, for the Visitation of the Sick; and new Forms composed for the Use of Prisoners for Debt or Crimes?

Crimes? For the greater Solemnity of receiving Profelytes into our Church; of reconciling Penitents to it; and of casting notorious Offenders out of it. These were some of the main things that were then design'd. As for any Favour to the Dissenters, none, that I know of, was intended, but what should have been entirely consistent with our own Constitution: And I hope it will not be thought any Crime for the Bishops, and Clergy of our Church, to be willing to enlarge its Communion, by any Methods which may be likely to gain others, and yet not injure our own Establishment.

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No sooner were their late Majesties, of glorious Memory, seated in their Thrones, but this Design was openly espoused by them. A Commission was issued out, under the Great Seal of *England*, to a large Number of Bishops and other eminent Divines, to meet together, and to consider of these Matters. What they did, having not had the Honour to be one of them, I shall not presume to say. This we know, that whatever they did, it was to have been carried on from them to the two Convocations of *Canterbury* and *York*: And after it should have pass'd their Approbations, it was finally to have been laid before the two Houses of Parliament, and so to have gone on to the Royal Assent. This, my Lords, was the Course thro' which all that was designed, or should have been done in this matter, must have pass'd; and I am perswaded nothing very injurious to our Church's Welfare, will ever be able to pass thro' all these.

Having thus given your Lordships a true Account of that Design which Dr. *Sacheverell* mentions under the Name of Comprehension, I doubt not but that your Lordships will now be amazed to hear, what a false and scandalous Report he has made of it. In the 16th Page of his Sermon, he thus speaks of it: '*The worst Adversaries of our Church, he says, were to be*
' *let*

‘ *let into her Bowels under the Holy Umbrage of
 ‘ Sons ; who neither believed her Faith ; own’d
 ‘ her Mission ; submitted to her Discipline ; or
 ‘ complied with her Liturgy. For the admitting
 ‘ of this Trojan Horse, big with Arms and Ruin
 ‘ into our Holy City, the straight Gate was to be
 ‘ laid quite open ; her Walls and Enclosures to be
 ‘ pull’d down ; and a High road made in upon
 ‘ her Communion. Her Articles to be taught
 ‘ the Confusion of all Senses, Nations, and Lan-
 ‘ guages.*’

This, my Lords, is a very strange Representation of so good a Design, as that I before recounted to your Lordships. Yet this Representation did this bold Man, as confidently, as falsely, make of it in the House of God, and publish to the View of the whole Nation. For thus he goes on : ‘ *This pious Design of making our House
 ‘ of Prayer a Den of Thieves, of reforming our
 ‘ Church into a Chaos, is well known to have been
 ‘ attempted several times in this Kingdom, and
 ‘ lately within our Memory ; when all Things
 ‘ seem’d to favour it, but that good Providence
 ‘ which so happily interposed against the Ruin of
 ‘ our Church, and blasted the long projected
 ‘ Scheme of these Ecclesiastical Achitophels.*’ To say nothing more of the Design itself, of which I have given an Account before ; pray, my Lords, who were the *Achitophels* that projected it, and must have concurr’d to the Execution of ? I have already named the first, and chiefest of them, the late Archbishop *Sancroft*. The next who openly approved of it, were the Commissioners who met upon it in the *Jerusalem-Chamber* : A Set of Men, than which this Church was never, at any one time, bless’d with either wiser or better since it was a Church : * Who it was that presided in the Convocation of this Province, to which this Project was next to be referr’d ; and who,

* The Lord Bishop of *London*.

had it gone on, must have had a chief Hand in the Management of it, I need not say. Every one who knows any thing at all of his Character, (and I am sure your Lordships are none of you Strangers to it) knows him to be too good a Friend to the Establishment of our Church, to have been capable of being engaged in such a villainous Design, as Dr. *Sacheverell* pretends, for the Subversion of it. Or had he been otherwise yet still the major Part of that venerable Body must have been as great *Achitophels* as himself, or no Harm could have been done by him. Pardon me, my Lords, if the Course of my Argument obliges me to rise yet one Degree higher, and to say, that the like Majority of your Lordships, and of the House of Commons, together with his late Majesty, must all have come into the Plot against the Church; or all the Skill and Malice of the inferior *Achitophels*, would have signified nothing. And what Censure that Man deserves who has the Confidence to insinuate to the World, that the Bishops, the other Clergy, the Convocations, the Parliament, nay, and the late King himself, our Glorious Deliverer; or at least the greater part of all these, were engaged in a Project '*so monstrous, so romantic, and absurd*, (for here I am content to use his own Expressions) *that it is hard to say whether it had more of Villany, or Folly, in it,*' I shall submit it to your Lordships to consider. All I design in taking Notice of this part of his Sermon, is only to clear the Memory of many excellent Persons who are dead; and to vindicate the Reputation of some still living, and in the highest Stations of the Church, from that Load of Infamy which this rash Man has with so much Virulence of Speech cast upon them: And to let your Lordships see that nothing was intended in all that Affair but what was both Honourable to those who engaged in it, and I am persuaded would have been for the Interest and Peace of our Church and State, had it been accomplish'd.

I come now to that which is the proper Subject of the present Debate ; namely, to offer such Passages to your Lordships, as I humbly conceive do plainly and fully make out the Second Article of the Commons Impeachment against the Preacher ; and prove him to have spoken with more Freedom than he ought, not only of the Dissenters themselves, but of the Toleration, (or as he had rather we should call it) the Indulgence granted by Law to them.

Page 662.

And here, as I remember, it was not deny'd either by his Counsel or himself, but that he had spoken, and spoken with Warmth too, against Toleration. The only Question is, What the Toleration is against which he spake ? Whether it was that which has been granted by Law to the Dissenters ? Or whether it was only against a general Toleration of Atheists, Deists, Socinians, Men of no Principles, perhaps of no Religion ? Or at most against such of the Dissenters as abus'd the Indulgence granted them by Law ; and made use of it to Purposes not at all warranted by it ? The former of these the Commons charge upon him : The latter he pretends ; the better to clear himself of their Charge.

To determine this Point, I must in the first place beg leave to observe, that among the several sorts of false Brethren, enumerated by the Preacher with relation to God, Religion, or the Church : the second kind is of those, who give up any Point of the Church's Discipline and Worship, *Page 8.* To this he adds, that those are false Brethren who defend Toleration, and Liberty of Conscience. And that we may the better know what Toleration and Liberty of Conscience he means, he specifies the very Persons to whom he refers, and of whom he speaks ; the Dissenters : *' If, says he, to comply with the
' Dissenters both in publick and private Affairs,
' as Persons of tender Conscience and Piety, to
' promote their Interests in Elections, to sneak to
' them for Places and Preferment, to defend To-
leration*

*' Toleration and Liberty of Conscience, and under
' the pretence of Moderation, excuse their Sepa-
' ration are the Criterions of a true Church-Man:
' God deliver us all from such false Brethren.'*

The Toleration therefore, and Liberty of Conscience, against which he speaks, must necessarily be that of the Dissenters; those who separate from our Church: He names no others; but carries the same Persons thro' his whole Sentence, both before and after those Expressions. Either therefore it is no Reflection upon the Act of Indulgence to say that all those who defend the Toleration of the Dissenters, and are for allowing Liberty of Conscience to them, are false Brethren with relation to God, Religion or the Church, *Pag. 6, 7*, and such against whom we ought to pray to God to deliver us all, *Pag. 8*: Or if this cannot with any Reason be either said, or supposed, then it must remain that Dr. *Sacheverell* has here said what the Commons charge him withal; and that in express Terms, *viz.* That he is a false Brother who defends the Toleration, not of Deists, Socinians, and I know not what Monsters of Irreligion, but of the Dissenters: Those same Dissenters who by the Act of Indulgence have a Right to that Liberty of Conscience of which this Gentleman speaks so very hardly; and prays God to defend us from all such false Brethren as shall presume to excuse it.

But not to insist upon a single Passage which may be supposed to have dropt unwarily from him: In the second Part of his Sermon, he proceeds to shew the great Perils and Mischiefs of those false Brethren, against whom he was before speaking, both to the Church and State, *Page 15*. And that these again are the same Persons who have a Right to the legal Indulgence, is so very clear, that I do not see how it is possible for any one to make the least doubt of it. *Page 18*. He describes them as Occasional Conformists to the Church. *Page 19*. As those who had the old Leaven of their Forefathers still working

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working in them : And, in the next Sentence, he expressly talks of the religious Liberty which our gracious Sovereign has indulged them. This in the very same Sentence he calls their Toleration ; (for the Doctor himself is not tied up to any Niceties of Expression ; he may call it so, tho' others may not :) These are the Persons, and the only Persons, of whom he speaks in all that part of his Discourse ; let us see what he says of the Indulgence granted by Law to them.

And first, he tells us, *Page 18.* ' *That it cannot be deny'd, but that tho' they do submit to the Government, their Obedience is forced, and constrain'd ; and so treacherous and uncertain, as never to be trusted. That they are as much Occasional Loyalists to the State, as they are Occasional Conformists to the Church ; and will betray either whenever it is in their Power, and they think it for their Advantage. That nothing but a sottish Infatuation can so far blind our Eyes and our Judgments, as to make us believe that the same Causes should not produce the same Effects ; that the same Latitudinarian and Republican Notions should not bring forth the same rebellious and pernicious Consequences. That we shall be convinced to our Sorrow, if we don't apprehend that the old Leaven of their Forefathers is still working in the present Generation ; and that this traditional Poison still remains in this brood of Vipers to sting us to Death. That they have advanced themselves from the religious Liberty which our gracious Sovereign has indulged them, to claim a Civil Right ; and to jostle the Church out of her Establishment, by hoisting their Toleration into its Place. That to convince us what alone will satisfy them, they insolently demand the Repeal of the Corporation and Test Acts, which under her Majesty, is the only Security the Church has to depend upon : And which (if we may believe him) they have so far eluded by their*
abominable

'abominable Hypocrisy, as to have undermin'd her Foundations, and indanger the Government, by filling it with its professed Enemies.' His Meaning is plainly this; that the Dissenters, whom we are so foolish as to indulge, are a parcel of false and treacherous Persons; Enemies both to our Church and State; and such as, if not timely suppress'd, will convince us to our Sorrow of the Weakness and Folly of taking such Vipers into our Bosom, as watch only for a fair Opportunity to sting us to Death.

But what then must we do to secure ourselves against these dangerous Enemies? Why first, the Doctor assures us, that they are never to be gain'd by any Favour that can be shew'd to them. *'* That he must be very weak, or something worse, that thinks, or pretends, that the Dissenters (for of these he still speaks) are to be won over by any other Grants and Indulgences than giving up our whole Constitution.'* This shews the Folly of trying the soft Way of Indulgence with them: And therefore he concludes, That *'He who recedes the least Tittle from it (our Constitution) to satisfy, or ingratiate with these clamorous, insatiable, Church-devouring Malignants, knows not what Spirit they are of; or he ought to shew who is the true Member of our Church.'*

This I think comes fully up to what is objected against him; namely, that Dr. Sacheverell does in his Sermon suggest and maintain, *'That the Toleration granted by Law is unreasonable; and the Allowance of it unwarrantable.'* For so it needs must be, if the Dissenters be such Men as he tells us they are; and will be satisfy'd with nothing less, than he assures us they will. And yet what next follows, is, if possible, still more express to the same purpose. It is objected a-

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* Sermon. p. 19.

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gainst him, by the Commons, that he had affirm'd in his Sermon, That ' *Queen Elizabeth was deluded by Archbishop Grindall (whom he scurrilously calls a false Son of the Church, and a perfidious Prelate) to the Toleration of the Genevian Discipline.*' The Fact is not denied; but the Expressions are excus'd, and the Truth of the Allegation is endeavour'd to be made out by Historical Memoirs: And it is hoped that your Lordships will not account it a High Crime and Misdemeanour, to have spoken too hardly of a Prelate who has been so many Years in his Grave.

I am, my Lords, very far from thinking, that the Commons ever intended to charge Dr. Sacheverell as guilty of High Crimes and Misdemeanours, for speaking scandalously of that good Archbishop. Their Concern was not for his Person, what Respect soever they may have had (as all true Friends of the Reformation must needs have a very great one) for his Memory. But the Truth of the matter is this: The Preacher complains Page 19 of his Sermon, that *Queen Elizabeth was deluded by Archbishop Grindall, to the Toleration of the Genevian Discipline.* He adds, ' *That the Archbishop was a perfidious Prelate, for deluding her to tolerate that Discipline. That she found it such a headstrong and encroaching Monster, that in eight Years she saw it would endanger the Monarchy as well as the Hierarchy: And like a Queen of true Resolution, and pious Zeal for both, she pronounc'd that such were the restless Spirits of that factious People *, that no Quiet was to be expected from them, till they were Utterly Suppress'd. That this therefore like a prudent Princess, she did by wholesome Severities; and the Effect was, that by this Means the Crown*

* Sermon, Page 10.

' for many Tears sate easy and flourishing on her Head: But that her Successor, King James, did not follow her wise Politicks.' And the Result was as deplorable on his side, as it had been glorious on hers; For by this Means, *' His Son fell a Martyr to their Fury; his unhappy Offspring suffer'd such disastrous Calamities; as made the Royal Family one continued Sacrifice to their Malice.'* And all this for want of those wholesome Severities which the wise Queen his Predecessor had used utterly to suppress that factious People.

This, my Lords, is the Doctor's Narrative, and I have given it you in his own Words. The Application is plain and home. The Dissenters are now again tolerated, as they were heretofore under Queen *Elizabeth*. There is a perfidious Prelate (perhaps in his Opinion a great many, who, like Archbishop *Grindall*, help to delude another Queen, into the Toleration of them. These *Eight Years* past (for the very Number of Years is remarkable) her Majesty has borne the restless Spirits of this factious People; and had no Quiet for them. It is now high time for her to alter her Measures, as Queen *Elizabeth* wisely did. It is the only way to make the Crown sit easy and flourishing upon her Head: And if this be not plainly to speak out what he would have done with the Act of Indulgence, I must despair of ever being able to know any Man's Meaning by his Expressions. Such Examples are not only the most likely to enforce, but the most proper and lively Methods to convey a Man's Sense, even to the dullest Capacity; and make him clearly perceive if not what he ought, yet I am sure what the Preacher would have him to do.

I have, my Lords, insisted the longer upon this Part of the Doctor's Sermon, because I would not willingly fall under the Censure of picking out disjointed Sentences, and putting them together from distant Places, that so I might the bet-

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ter draw a Sense out of them contrary to his Meaning. I shall trouble your Lordships but with one part more of it, to the same Effect, Page 24, 25. where he comes to consider, *What should be the Result of his long Discourse?* I shall read it to your Lordships in his own Words, Page 25. 'Let us therefore, says he, as we are 'unhappy Sharers of St. Paul's Misfortune, to 'have our Church in Perils amongst false Brethren, follow his Example and Conduct in a 'parallel Case. He tells us in his Epistle to the 'Galatians, c. 2. That he was obstructed, and 'pester'd in preaching the Gospel, by False Brethren unawares brought in, who came privily to 'spy out his Liberty which he had in Christ 'Jesus, that they might bring him into Bondage. 'To whom he gave place by Subjection, no not 'for an Hour, that the Truth of the Gospel 'might continue with the Church. Doubtless 'this brave and bold Resolution did the Apostle 'take by the peculiar Command and Inspiration of 'the Holy Ghost: And yet if our Dissenters had 'liv'd in those times, they would have branded 'him as an intemperate, hot, furious Zealot, 'that wanted to be sweetned by the gentle Spirit 'of Charity and Moderation forsooth.'

Here we have again the Persons of whom the Preacher speaks: They are our Dissenters, not the Deists, Atheists, Socinians, Hypocrites, of our times. And accordingly what follows, plainly refers to them: For thus he goes on, 'Schism 'and Faction are things of impudent and incroaching Natures; take Permissions for Power; 'and advance a Toleration (for so the Doctor is 'still at Liberty to call what we must stile Indulgence) immediately into an Establishment.' Your Lordships will please to observe, by the Way, that this was the very thing he had before said of these same Persons, Page 19. and thereby plainly shews, that he speaks in both Places of those Dissenters who have a Right to the Toleration or Indulgence, granted by Law to Protestant Dissenters.

Dissenters. Let us now hear what he would have done with them. Why he would have them
' *treated like growing Mischiefs, or infectious*
' *Plagues; kept at a distance, lest the deadly*
' *Contagion spread.*' And the Method he proposes in order thereunto, is this, ' *Let us therefore,* says he, *have no Fellowship with these*
' *Works of Darknes; but rather reprove them.*' These Works, *Schism* and *Faction*; for of these, and these only, he here speaks, This is the Peoples Part, and the inferior Pastors: ' *As for the*
' *superior Pastors, let them do their Duty, in*
' *thundring out their Ecclesiastical Anathema's*
' *against them.*' Against whom, my Lords? what Works of Darknes? Still the same he before-mention'd: *Our Dissenters*, those are the Persons: Their *Schism* and *Faction*; those are the Works of Darknes to which he refers. ' *And*
' *let any Power on Earth dare reverse a Sentence ratify'd in Heaven.*'

This, my Lords, was the last part of the Commons Impeachment upon this second Article: And 'tis so plainly express'd by the Preacher in this Passage, that I confess it amazes me to consider with what Positiveness he has thought fit to deny that any such thing was meant by him. The Persons whom the superior Pastors are summoned to anathematize, are the same with those, whom the other Pastors and People are to have no Fellowship withal, but to reprove. These, by the necessary Connexion of his Discourse, are our Dissenters; whose Works of Darknes, he states to be *Schism* and *Faction*: Those Dissenters to whom the Government had granted a Toleration; as himself, in the same Passage, takes Notice. Which being so; I shall leave the Doctor to deny and protest, as he pleases; but when all is done, his own Words will rise up against him, and appear to every impartial Person so plain, and positive, as to put it beyond the Power of any artificial Interpretation to perplex the Meaning of them,

And this lets us into the true Application of those Passages of Scripture, with which he concludes his whole Discourse. In which, having shewn the Danger of our Church from these false Brethren, and exhorted his Auditory to a steady Courage and Resolution in the Defence of it; he thus at once both inforces his Doctrine, and abuses his Adversaries. That tho' the Church (for to that he applies, what * *Zachariah* spake of the false Prophets that seduced the People) *lies bleeding of the Wounds she has received in the House of her Friends*: A Passage first thrown at my † self, for defending the Prince's Authority, when some of these very Men engaged as vehemently on the side of Liberty, against the Rights of the Crown, as they now pretend to stand up vigorously for it: ** *Tho' the Ways of Zion may mourn for a Time* (so the Doctor glosses upon the Text) *and her Gates be desolate; her Priests sigh, and she in bitterness, because* (it is the Preacher's Reason, the Text has no such Word) *Her Adversaries are chief*; he means in the Administration under her Majesty; *and her Enemies at present prosper*; (so he again improves the Text; in hopes, I suppose, that it will not be long before he shall have preach'd them out of their Places:)+† *Tho' among all her Lovers she has few*, (the Prophet complained that *Jerusalem* had none) *to comfort her*; *and many* (*Jeremiah* said all) *have dealt treacherously with her, and are become her Enemies*; (he refers to those of whom he had before spoken, Page 22.) *** *Tho' there are few to guide her among all the Sons which she hath brought forth; neither are there many to take her by the Hand of all the Sons that she hath brought up*; (*Isaiab* in both places, says

Page 665.

* Zech. xiii. 6.

† See Dr. *Atterbury's* Rights of an English Convocation; Title Page.

** Lament. i. 4, 5.

+† Lament. i. 2.

*** *Isaiab* li. 18.

none :) *Tho' her Enemies cry, down with her, down with her, even to the Ground: That is, in other Words, tho' (the Preacher, and a few of his Friends, excepted) both the Fathers and Pastors of the Church; and the Men who are at present in Power, and Authority, in the State, are become false Brethren, and run in with those Enemies of the Church, our Dissenters, against it; 'Yet there is a God that can, and will raise her up, if we forsake her not.'*

It were an easy Matter to make many proper Remarks upon these Passages of Scripture, thus applied, or rather abused, by the Preacher: But that would be besides my present Business; and will fall in more properly under the last Article of this Impeachment. It is enough that I have, I hope, fully shewn your Lordships how Dr. *Sacheverell* has treated if not the Indulgence itself, yet I am sure, those who are intitled to the Benefit of it: And who, if they shall have the Misfortune, by this kind of Preaching, to be once generally thought such wicked, false, and dangerous Enemies to our Church and State as they are here represented, I cannot think that their Indulgence will hold long. If they have Numbers to secure them, it is well for them: But otherwise I am sure as the Case is here stated, it must be our Wisdom, as well as Duty, to suppress them.

How criminal such an Invektive as this will be accounted in the Eye of the Law, I dare not presume to suggest: Much less shall I pretend to intimate what Censure it may deserve. Somewhat I think should be done to put a Stop to such Preaching, as if not timely corrected may kindle such Heats and Animosities among us, as may truly endanger both our Church and State. As for the Preacher himself, I am very willing to come into any Measures of Favour to him, that are consistent with your Lordships Honour and Justice, and will answer the Ends of the

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Impeachment that has been brought before us against him.

The Bishop of Norwich's Speech in the House of Lords, at the opening of the Second Article of Impeachment against Dr. Sacheverell.

My LORDS,

I Am very sensible under what Disadvantage in the Opinion of many, a Bishop must speak against a Clergyman that stands accus'd of Crimes committed by him in the seeming Execution of his Office; especially after having been so publickly required to be an Advocate as well as a Judge. And I am the more sensible of this Prejudice lying against me, for having been so lately called into that Order, and for being so unworthy of it.

But I think my self obliged notwithstanding, under all these Disadvantages, to deliver not only my Judgment, but also the Reasons that determine me to it: Which I shall do as plainly as I can; with that Deference to your Lordships, which I am sure it must upon all Occasions particularly become me to pay; and at the same time with that Freedom which I think the Importance of this Cause does at this time require.

Dr. *Sacheverell* stands impeach'd by the Commons of *Great-Britain*, of High Crimes and Misdemeanors express'd in the several Articles of the Charge exhibited against him: And your Lordships have heard what they have said in support of that Charge, as well as what has been offer'd in the Doctor's Defence.

Your Lordships have also debated among your selves the Merits of the Cause as to the first of these Articles; and have come to a Resolution, that the Commons have made good that part of their Charge: In which Resolution as I did heartily concur; so I was ready to have humbly represented to your Lordships my Reasons for so doing, had there been either room or occasion for it.

Your

Your Lordships are now upon the *Second Article*; wherein the Doctor is charged for *suggesting and maintaining that the Toleration granted by Law is unreasonable, and the Allowance of it, unwarrantable*; with other Particulars that have immediate relation to this general Charge, and which are indeed so many Proofs of it.

In this View therefore, my Lords, I beg leave to consider them: And the *First* of these Instances in Support of this Charge, is, that he asserts that *He is a false Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience*: And this, my Lords, the Doctor does assert in so many Words. It is *one* of the *many* Marks he gives whereby we may discern who is a false Brother in those Respects; not a *small Part* of *one general Mark*, as was alledg'd very inconclusively, I think, in his Defence. For if it was to be granted, (tho' it cannot be fairly pretended) that the Doctor makes the defending of Toleration and Liberty of Conscience, one Branch only of the Character of a false Brother; I do not see how it cou'd make even a part of that Character, if there was no false Brotherhood in it. And I shall not trouble myself or your Lordships with going about to settle the degrees of false Brotherhood that are in this part of the Character, because I think every degree of it is unreasonable, and not to be warranted.

And therefore the Doctor cannot make it so much as a part of the Character of a false Brother to defend Toleration and Liberty of Conscience, as it is confess'd that he does, but he must at the same time *suggest and maintain that the Toleration is unreasonable, and the Allowance of it unwarrantable*. For it can never be any degree of false Brotherhood, to defend what is reasonable and warrantable: Nor wou'd even the Doctor, as inconsistent a Man as several of the Noble Lords that have spoken for him represent him to be, ever have made it one; if he had not
himself

himself condemn'd that which he blames others for defending.

The *Second Instance* alledg'd is, that *he calls Archbishop Grindal a false Son of the Church, and a perfidious Prelate, for deluding Queen Elizabeth into the Toleration of the Genevian Discipline.* I shall not, my Lords, go about to add any thing to the full and just Vindication you have heard of that excellent Prelate. But can any of your Lordships believe, that a Presbyter of the *Church of England*, professing more than ordinary Zeal for Episcopacy and the Constitution of this Church, should bestow such Language on one who was the first Bishop and the Ornament of it so long; only for disposing that glorious Queen to a mild Treatment of the Puritans of that Time, which is the utmost that is pretended to be laid to his Charge, if he had thought Toleration a reasonable Thing, or what was fit to be established by Law?

This, my Lords, I confess can never enter into my Thoughts, as ready as I am to enlarge them for the admitting of any favourable Construction that will not shut out common Sense.

The *Third Instance* is *his making it the Duty of the Superior Pastors to thunder out their Ecclesiastical Anathema's against Persons intitled to the Benefits of the Toleration.* And to shew that he has done this, I need only refer your Lordships to that part of his Sermon where the Superior Pastors are call'd upon to do so; (*viz.*) the Fourth and last General Head, where he draws the Consequence of all that he had spoken before, in the following Words. * ' Now what ' should be the Result of this long Discourse, ' but that if we bear any true Concern for the In-

* Vide *Serm.* p. 22. l. 4.

terest, Honour, and Safety of our Church and Government, we ought stedfastly to adhere to those Fundamental Principles, upon which both are founded, and upon which their Security under God alone depends; and consequently that it highly behoves us, cautiously to watch against, to mark, and avoid all those that thus treacherously desert them. And indeed it would be both for our Advantage, as well as their Credit, if such Men would throw off the Mask, entirely quit our Church of which they are no True Members, and not fraudulently eat her Bread, and lay wait for her Ruin, purloin her Revenues, and ungratefully lift up their Heels against Her. For then we should be one Fold under one Shepherd; all those invidious Distinctions, that now distract and confound us, lost; and we should be terrible like an Army of Banners to our Enemies; who could never break in upon such an uniform and well compacted Body. This indeed would be a True Peace, and Solid Union, when we should all with one Mind and one Mouth glorify God, and not with a confus'd diversity of contradictory Opinions, and inconsistent Jargon of Worship, which the God of Peace, Purity, and Order cannot but abhor. As it is a Maxim in Politicks, that all Governments are best supported by the same Methods and Councils upon which they are founded; so it will appear undeniably true in its Application to our Constitution, which can be maintain'd by no other Principles, but those on which it is built, and like their Basis, the Gospel, if there's any Violation, or Breach made in any Branch of it, it shakes and endangers the whole Frame and Body. These things, however little they may be represented by our Adversaries, will be found of the most considerable Consequence. Let us therefore, as we are unhappy Sharers of *St. Paul's* Misfortune, to have our Church in Perils among false Brethren, follow his Example and Conduct in a parallel Case. He tells
us

' us in his Epistle to the *Gallatians*, c. 2. That
 ' he was obstructed and pester'd in his preach-
 ' ing the Gospel, by *false Brethren*, unawares
 ' brought in, who came privily to spy out his
 ' Liberty, which he had in Christ Jesus; that
 ' they might bring him into Bondage : To whom
 ' he gave place by Subjection, no not for an
 ' Hour, that the Truth of the Gospel might
 ' continue with the Church. Doubtless this brave
 ' and bold Resolution did the Apostle take by the
 ' peculiar Command and Inspiration of the Holy
 ' Ghost ; and yet if our *Dissenters* had liv'd
 ' in those Times, they would have branded
 ' him, as an Intemperate, hot, furious Zealot,
 ' that wanted to be sweeten'd by the gentle Spi-
 ' rit of Charity and Moderation forsooth. Schism
 ' and Faction are Things of impudent and in-
 ' croaching Natures ; they thrive upon Conces-
 ' sions, take Permission for Power, and advance a
 ' Toleration immediately into an Establishment.
 ' And are therefore to be treated like growing
 ' Mischiefs, or infectious Plagues, kept at a
 ' Distance, lest their deadly Contagion spreads.
 ' Let us therefore have no Fellowship with
 ' those Works of Darknefs, but rather reprove
 ' them. Let our superior Pastors do their Duty
 ' in thundering out their Ecclesiastical Ana-
 ' themas, and let any Power on Earth dare re-
 ' verse a Sentence ratify'd in Heaven.'

Can any Thing, my Lords, be plainer than
 that the Dissenters, and they only, are here spo-
 ken of ? And what does the Doctor say in his
 own Defence to avoid it ? his Words in his printed
 Speech are these :

' Schismatics, my Lords, are not the only Per-
 ' sons against whom Ecclesiastical Censures may
 ' be denounced. The Works of Darknefs which
 ' I referr'd to as fit to be reprov'd, in that part
 ' of my Sermon where I speak of these Cen-
 ' sures, are of the same kind with those men-
 ' tioned by the Apostle, whose Words I produc'd.
 ' All lew'd and immoral Practices, &c.

It is very true, my Lords, Schismatics are not the only Persons against whom Ecclesiastical Censures may be denounced, but I must still say they are the only Persons referr'd to, in the Paragraph I have read to your Lordships ; and therefore I own I am a good deal concern'd to find the Doctor making so vain, so unsincere a Defence. For it is Works of Darkeness in general he is cautioning against, but expressly, by a Word of his own inserting, not the Apostle's, those Works of Darkeness mentioned immediately before ; Schism and Faction, which with him go always together,

These are the Sins against which he calls upon his Superior Pastors to thunder out their Ecclesiastical Anathemas ; nor can the Charge be avoided by that Distinction which was offer'd in his behalf, between a Censure purely Spiritual, and an Ecclesiastical Censure. For admitting there is Ground for that Distinction in a Scholastical Consideration of the general Question of Christian Censures ; yet there is no room to make use of it in this Case, because he calls expressly for Ecclesiastical Anathemas, which can be apply'd to none but such as are part of the Order and Discipline of this Church. Page 667.

And it is certain, my Lords, that these Censures cannot, since the Act of Toleration, be inflicted upon Dissenters how much soever their Schism remains ; because it is expressly provided by an Act of Parliament, (an Act, my Lords, of the whole Christian Society, to which the Superior Pastors were personally concurring) that they shall not be treated as Schismatics in the Way of those Ecclesiastical Censures, to which their Separation would otherwise have certainly subjected them.

And tho' I cannot undertake upon Memory to be very particular, yet I dare venture to say, there have antiently been Relaxations of the Discipline of the Church, even when the Crime was thought to deserve the Continuance of it, for Publick Expedience, and better preserving the
Peace

Peace of the Christian World: And that in such Cases any Presbyter or Bishop wou'd himself have been censured, if he had not acquiesced in such Relaxations.

My Lords, a Presbyter of the Church of *England*, is the more obliged to acquiesce in all such Relaxations amongst us as are legally made, because he has solemnly promised at his Ordination, that *he will give his Faithful Diligence always so to minister the Doctrine, and Sacraments, and the Discipline of Christ, as the Lord hath commanded, and as this Church and Realm hath receiv'd the same.*

I have already observ'd to your Lordships, how the Discipline of the Church stands at present, as to the Point in question. And as the Relaxation of it in that particular, was agreeable to that Temper which the Bishops who petitioned King *James*, gave the Dissenters ground to expect: So I am verily persuaded that the Church is so far from having been hurt by this Indulgence, that it has receiv'd Advantage as well as Credit, from that Moderation which gave way to it. I could give several Instances of this within my own Observation, while I was Arch-deacon, under a Reverend Prelate that sits now before me, and since I have had the Honour to be on this Bench: In which Compass of Time several Men of Sobriety and Learning, bred up to be Ministers amongst the Dissenters, have left the Separation, and upon due Trial have been admitted to Orders in our Church; in which they have officiated with intire Conformity to our Rules, and to the Honour of our Holy Religion.

These Instances have been so frequent and remarkable, since the Dissenters have been exempted from the Penalties of certain Laws, above what had been observ'd before; that I think it very ill becomes any Clergyman to preach against that Exemption, as the Doctor (notwithstanding his
Reserve

Reserve for Consciences truly scrupulous) has done ; and to call upon his Superiors to act in Contradiction to it. He should have forbore doing this, at least out of Regard to her Majesty, who had been graciously pleased to declare from the Throne, that she would preserve the Toleration inviolable : A Resolution I shall ever think it my Duty upon all proper Occasions to express my Approbation of, as Just and Wise and Charitable, and every way agreeable to the Spirit and Genius of the Christian Religion.

I shall not, my Lords, enter into the Enquiry of what Sentences are ratified in Heaven ; but as one may venture to say, that all that have been pronounced on Earth, are not ratified there : So by all I have seen of the Doctor's Spirit in these Matters, I have great Reason to fear, that if the Power of the Keys were in his Hands, it would often be very sadly abused.

However, he has so good an Opinion of his own Spirit, as to put his Superiors in mind of another Part of their Duty, immediately after that I have mentioned ; and that is, to promote Men of Probity, Conscience and Courage, without which he thinks they cannot be fit Members of the Church Militant ; in which I can as little agree with him as in the former Demand. For if I may judge of the Probity, Conscience, and Courage he thinks so deserving, by what appears in his Sermon, compar'd with his Speech to your Lordships ; I cannot think them Qualifications for a Minister of the Church of Christ in any Respect ; and I hope I shall be so happy as to find all the Reverend Prelates, with whom I have the Honour to sit, agreeing with me in this.

But tho' I hope such a Conduct will never recommend any Person to Favour ; yet I do not desire that even that which I heartily blame should be punished so much as I think it deserves. And tho' he, who pleads so warmly for wholesome Severities towards those who differ from him, has
the

the least Title to your Lordship's Compassion; yet I hope he will find it, as far as the just Concern you have for the Publick Tranquility will allow you to shew it.

This I say from that which, I bless God, is the natural Temper of my Mind, and not from the Care that has been taken by some to intimidate, as far as they could, those who were to have the Cognizance of the Doctor's Cause, and were not thought to be favourable to it.

I shall not take upon me to charge the Doctor or any of his particular Friends with this Practice; as great a Temptation as one is under to do so from several Circumstances. And it is not the least, that occurs in his Prayers, which he has published upon this Occasion, to represent not so much to God as to the World, that he is under Persecution, when he is prosecuted for offending against the Law by those who in common Justice ought to be thought the fairest Accusers; and before your Lordships, who are justly acknowledged to be the most impartial Judges.

However I will never believe, till I cannot avoid it, that any Members of the Church of *England* who have acknowledged the Government, much less any Clergyman who has so often profess'd his Obedience to it in Church and State, shou'd have been any Way accessary to those Threatnings that have been given out, particularly against such Bishops as should happen to condemn the Doctor's Proceedings.

Page 668.

What, my Lords, I have seen of this Cause, is, that I am likely to be one of those Bishops; and tho' I do not pretend to any great Share of Courage, I am very free to declare, that I am in no Apprehension of what may befall myself for condemning this Person, as I am of what will probably befall the Publick, if your Lordships should not condemn him.

But that is in your Lordships Judgment, to which I humbly submit it: But think the Commons have made Good the Second Part of their Charge.

PROCEEDINGS upon the Impeachment against JAMES Earl of Derwentwater, WILLIAM Lord Widdrington, WILLIAM Earl of Nithisdale, ROBERT Earl of Carnwath, WILLIAM Viscount Kenmure, and WILLIAM Lord Nairn, in Westminster-Hall, on Thursday the 9th of February, 1715.

TWO Things seem to have contributed to the Some Occasions
 Infurrection, for which these Lords were im- of the Infurrection
 peach'd and try'd: The one was the dismissing on, for which
 the Duke of *Ormond*, the Lord Viscount *Bolingbroke*, these Lords were
 the Earl of *Marr*, and other great Men, in the Ad- Impeach'd.
 ministrations, from their Employments a little a-
 bruptly on the Accession of King GEORGE I. And
 the other, the appointing a Secret Committee of
 the Commons, to enquire into the Conduct of the
 late Queen's Ministers; who imprisoned some of
 them, and charged others with Treasonable Practi-
 ces to defeat the *Hannover* Succession. It was
 much expected that something of this Nature wou'd
 have appear'd in the Tryals of these Noblemen,
 from some Speeches made in the House, and even
 from the Preamble to the Articles; but People are
 pretty well able, by this Time, to judge of the
 Truth of those Suggestions; and whether they were
 not principally propagated and encouraged to prevent
 some Gentlemen being restor'd to their Posts and
 the Royal Favour, and to establish another Set of
 Men. The Lord Viscount *Bolingbroke*, Secre-
 tary of State in the late Reign, observing a
 Storm arising against the late Ministry, went over
 to *France* about the 26th of *March*, 1715. On the
 10th of *June* following, Mr. *Walpole*, Chairman
 of the Secret Committee, mov'd to impeach the

Lord Viscount *Bolingbroke* of High Treason, and the Lord *Coningsby* mov'd to impeach the Earl of *Oxford* in like manner; which Impeachments were agreed to; and the Commons, on the 17th of the same Month, ordered Mr. *Prior*, who was one of the Plenipotentiaries at the Treaty of *Utrecht*, into close Custody, and that no Body shou'd be admitted to see him.

On the 19th of *June* the Commons impeach'd the Duke of *Ormond* of High Treason; and the Earl of *Strafford*, another of the Plenipotentiaries, of High Crimes and Misdemeanors; (but was not proceeded against:) Whereupon the Duke of *Ormond* withdrew, and went over to *France*; but the Earl of *Oxford* was committed to the *Tower*, and afterwards tried, but came off with Honour.

On the 1st of *August* the Earl of *Marr*, Secretary of State in the late Reign, retir'd from Court; and about the Middle of the same Month assembled the Friends of the Pretender in *Scotland*, and formed an Army; among whom were the Earl of *Nithisdale*, the Lord *Kenmure*, and other of the Impeach'd Lords.

On the 20th of *August* an Act pass'd for the Attainder of *Henry* Lord Viscount *Bolingbroke*, and another for the Attainder of *James* Duke of *Ormond*, of High Treason.

The Earl of *Marr* on the 3d of *September* proclaim'd the Pretender at *Aboyn*, in *Aberdeenshire*, by the Name of *James VIII*.

Mr. *Forster*, who had accepted the Post of the Pretender's General in *England*, assembled a Body of Malecontents in *Northumberland* on the 6th of *September*.

About the 19th of *October* the Lord Viscount *Kenmure*, the Earls of *Nithisdale*, *Carmath*, and *Wintown*, join'd Mr. *Forster* with about Two hundred Horse from *Scotland*; and on the 24th of the same Month, Brigadier *Mackintosh* join'd Mr. *Forster* with a Body of Scottish Foot about ten Miles from *Berwick*: Their whole Number was computed to be 2500 when they march'd into *Lancashire*; but I don't find they were more than 1500 after the Engagement

gement with the King's Forces. As to their several Marches and Counter-Marches, till their Surrender at *Preſton*, on the 14th of *November*, theſe will be ſeen in the enſuing Evidence. *

How

* The following Biſhops, to ſhew their Loyalty, publiſh'd the following Declaration, viz.

A DECLARATION of the Archbiſhop of Canterbury, and the Biſhops in and near London, teſtifying their Abhorrence of the preſent Rebellion; with an Exhortation to the Clergy and People under their Care, to be Zealous in the Diſcharge of their Duties to his Maſteſty King GEORGE.

WHEREAS an Unnatural Rebellion has been raiſed againſt Our Lawful and Rightful Sovereign King GEORGE in ſeveral Parts of the Kingdom, and is ſtill Threatned in more, We have thought it incumbent upon Us, out of Our Duty to God, to Our King, to Our Country, and to Our Holy Religion, in this Publick Manner to Declare Our Abhorrence of it, and to warn both the Clergy and People under Our Charge, of the great Obligations they lie under, upon all theſe Accounts, to ſhew a hearty and an open Zeal for the Government in this Conjunction.

The Providence of God has, indeed, ſo wonderfully appeared hitherto, both in timely Diſcovering the Treason, and in Diſappointing Our Enemies of ſeveral Advantages they expected, that We have great Reaſon to truſt in Him, that the Event will be to the Confuſion of the Wicked Actors in this Rebellion: But, however, in a Matter of this High Nature, wherein Our Duty and Our deareſt Interests are ſo deeply concerned, no Endeavours ought to be thought ſuperfluous, nor Zeal unneceſſary.

We are the more concerned, that both the Clergy and People of Our Communion ſhould ſhew themſelves hearty Friends to the Government upon this Occaſion, to vindicate the Honour of the Church of *England*, becauſe the chief Hopes of Our Enemies ſeem to ariſe from Diſcontents artiſicially raiſed among Us, and becauſe ſome, who have valued themſelves, and have been too much valued by others, for a pretended Zeal for the Church, have joined with Pa-piſts in theſe Wicked Attempts; which as they muſt ruin the Church if they ſucceed, ſo they cannot well end without great Reproach to it, if the reſt of Us do not clearly and heartily Declare Our Detestation of ſuch Practices.

We are not ſurprized, that Pa-piſts ſhould riſe up againſt a Government which they would never yet own, and endeavour to ſet a Perſon upon the Throne, who will Eſtabliſh their Religion, and Ruin Ours, (tho' Rebellion is but an ill Return for the Quiet They have enjoy'd.) But that profeſs'd Members of the Church of *England* ſhould join with them in this, and out of Private Diſcontents, Attempt to ſet up a Perſon whom they have ſo often and ſo lately Abjured, is ſo vile and deteſtable a Thing, as may juſtly make them odious both to God and Man; but at the ſame Time, to pretend a Zeal for the Church, that is, to join with Pa-piſts to ſet up a Popiſh Pretender, to ſupport the Church of *England*, is ſuch an

The Parliament
was not sitting
at this Time, as
the Folio Edition
mentions.

How the Editors of the *Folio* Edition came to say that the Parliament was sitting at that Time, I can't conceive, because they did not meet till the 9th of January

Imposition upon the common Sense of Mankind, that nothing, even in Popery it self, can be more absurd, and nothing but an Infatuation from God, justly inflicted for Our Sins, can suffer to pass upon the Nation.

How much Blood this may cost, or what Ruin it may bring on Our Country, God only knows; but we think proper to observe to you, that the more clearly and openly We Declare Our selves for the Government, the less it will probably be: And that all those must have a Share in the Guilt of the Innocent Blood that shall be spilt, not only who actually join in the Rebellion, but who do any way promote it, or, even by their Silence at this Juncture, shall give Hopes to the Pretender and his Friends, and just Cause of Jealousy and Suspicion to the Government.

And is this a Time to stand Neuters, when all lies at Stake? or is Popery become so innocent of late, that it is indifferent whether a Popish or a Protestant Prince be on the Throne? This We speak to those who have owned the King's Title, and have sworn to Maintain it, and are ready to do it again, as Occasion offers; who, We have Reason to believe, are so many, that if they are true to their Oaths, the Government (humanly speaking) cannot be in any Danger. And is it not fit for all such Persons to consider seriously what those Oaths are, with which they have bound their Souls? They have not only Abjured the Pretender, and his Title; but have Sworn to Defend King GEORGE to the utmost of their Power, against all Traiterous Conspiracies and Attempts whatsoever, which shall be made against His Person, Crown, or Dignity; and to the utmost of their Power to Maintain and Defend the Succession of the Crown against the said Pretender, and all other Persons whatsoever.

These Words do not only import, that We will not Rebel against the King; but that We will be Active for Him according to Our several Stations, especially in Times of Danger, when rebellions are raised against Him: They who are called to be Soldiers, by Fighting courageously for Him; They who are Magistrates, by using their Authority for His Support; They who are Ministers, by their Prayers, by their Preaching, and by their Admonishing those under their Care, of their Duty to Him; and all of Us, by a cheerful Ready Declaration of Our Resolution to stand by Him.

Such a Conduct would discourage the Rebels, and Animate the Government; would put an End to Our Troubles, and Support His Majesty in the just Possession of the Crown, which was settled upon His Family with very Mature Consideration, and for Just and Weighty Reasons, as being the next Family of the Royal Blood that were Protestants; from whom only We could expect Protection in Our Religious and Civil Liberties, which are the Birth-right of the People of *England*, and which no Man has a Right to invade. This Settlement was established by the whole Legislature,

January afterwards, the very Day these Lords were impeached : On the 10th, the Lords were brought from the *Tower* to the Bar of the House of Peers,

statute, and Confirm'd by many Acts of Parliament, made in Two different Reigns, and under the Prevalency of each of the Unhappy Divisions of Parties among Us ; several of them, in the last Years of Our late Gracious Queen, and has been, from Time to Time, Sworn to by almost all of all Orders and Degrees of Men among Us.

As this Settlement was made for the Security and Benefit of these Kingdoms, so have We all the Reason in the World to think Our selves Happy in that Person, who, by all this Authority, at present Reigns over Us. Even His Enemies are forced to confess, that He is a very Good and Gracious Prince : He lives in the Constant Communion of the Church of *England*, and has given Us both His Oath and His repeated Royal Word to Protect it ; and He has not, by any Thing He has done, given Us the least Reason to suspect, but that it will Flourish, at least, as much under His Government, as under that of the best of His Royal Predecessors.

But if the Pretender should prevail, what can the Church of *England* expect, but Ruin and Destruction ? A Popish Prince upon the Throne, bigotted to his Religion, and heated with what will then be called ill Usage, together with a long Train of Papists in the Succession, can bode nothing but Fatal and Irrecoverable Ruin to it. May not We in this Matter appeal to the Experience of all Countries, whether a Succession of Popish Princes have not Ruined the Protestant Religion wherever it has been Planted. They are obliged by the Laws of their Church to extirpate out of their Dominions what they call Heresy, which their Canonists treat as a Crime more heinous than either Murder or Rebellion. And these Laws they never fail to put in Execution, when they have full Power to do it ; as We may be satisfied from what was done in *Flanders*, where, according to the Account of Writers of that Communion, above Fifty thousand were put to the most miserable Deaths.

To pass over the Massacres and horrible Persecutions in *France*, *Savoy*, and other Foreign Countries, let Us call to mind how much this Church and Nation suffered in the Bloody, tho' short Reign of Queen *Mary*, contrary to Solemn Promises ; when not only many were put to Death as Hereticks Convi&t, but the Torture was ordered for all whom They suspected, and who wou'd not Confess, according to the Barbarity of the Inquisition ; which Horrid Court, or something very like it, wou'd probably have been set up in this Kingdom, had that Popish Reign lasted but a little longer ; And We have Reason to fear it wou'd effectually be established here, if ever God, for Our Sins, shou'd suffer another Popish Prince to be Settled on this Throne.

The Progress that was made toward the bringing this Yoke of Bondage upon Us, and the Miseries with which we were Threatned under the late unhappy King *James*, are too fresh in Our Thoughts to be forgotten : And what beset that Unfortunate Prince, will certainly be Remembered and Resented by him who claims an Indefeasible Right to his Kingdoms.

Peers, and the Articles of Impeachment being read to them, they were allowed to the *Monday* following to put in their several Answers. Afterwards the

But besides this, how must the Pretender look upon the Clergy of the Church of *England*, after all that they have been doing for near thirty Years together? They were the Clergy, that in the Time of King *James* did justly alarm the Nation with the Dangers of Popery; from whence followed all that was done at the Revolution. And the Clergy have every Year since that, upon the Fifth of *November*, given God Thanks for what was then done, *for making all Opposition fall before Him, [the Prince of Orange,] till he became Our King.* They have not only taken all the Oaths established by Law, but have used the daily Prayers, and those of the several Fasts and Thanksgivings, for the Prosperity of the Government. They have frequently, from Time to Time, in their Addresses from the Convocation, and from their respective Dioceses, promised to stand by the Protestant Succession. How must the Pretender look upon Persons, that have done all this? That have Prayed against Him, that have Addressed against Him, that have Sworn against Him, and Abjured Him for so many Years together?

What a Reproach will this Matter then be to the Church of *England*? Such of Us as stand true to Our Oaths, will then be called Rebels and Traitors; and such as do not, (if any shall be so Wicked,) will be called Atheists and Infidels, for taking Abominable Oaths against their Consciences. What Scandal will this give to Our People? and how will they be apt to turn Papists in great Numbers, when We, that should direct and stand by them, shall fall under such Reproaches? But We hope better, tho' We thus Speak; and that God will not suffer those sore Judgments to come upon Us and Our Country.

We do therefore, in the Name of God, call upon all those who are under our Care, in the first place, to humble themselves before God, for the great and crying Sins of the Nation; for that Spirit of Infidelity and Libertinism; of Unthankfulness for the Mercies of the Gospel; of Formality and Hypocrisy; of Strife and Envy; of Hatred and Animosity, which are so rife among Us, and which are generally the Forerunners of the Destruction of any People. Let Us all cry mightily to God, to avert these Judgments, which We have so justly deserved; that He would *Save His People*, so often and so wonderfully preserved by Him, *and not give his Heritage to Reproach*; that he would not suffer this Church to be Over-run with Superstition and Idolatry, or leave us to the Mercies of them, *whose Mercies are cruel.* Let Us particularly Pray for the Preservation of the Person and Government of Our most Gracious Sovereign King *GEORGE*, that God would cover his Enemies with Shame; *but that upon Himself and His Posterity, the Crown may ever Flourish.* We do also Charge both Clergy and People, as they will be Answerable for the Destruction that may otherwise come both upon the Church and Nation, that They endeavour to strengthen the Hands of the Government in this Dangerous Conjunction: The Clergy by plainly Admonishing their Flocks of their Duty, both to
their

the Time was enlarged to the 19th, when they were all brought to the Lords Bar, and pleaded guilty, except the Earl of *Winton*, who obtained further Time to put in his Answer. Six of the Lords plead Guilty.

The Editors of the *Folio*, having introduced these Proceedings, with a Speech, said to be made by Mr. *Lechmere* in the House of Commons, on the 9th of *January*, which, they tell us, induced that House to carry up these Impeachments, I shall here give an Abstract of it.

“ He said, Their greatest Concern was to put an End to the Rebellion: And to that End they ought to strengthen the King’s Hands, so as to enable him speedily to complete that Work; and that with the greatest Cheerfulness, from the Experience they had of his Majesty’s Wisdom and Justice, who would make no other Use of the Confidence the Parliament reposed in him, than to promote the Welfare of his People; and that whatever extraordinary Assistance the present Juncture of Affairs might require, *they would be continued no longer than the publick Necessity called for*: That the next Step was *the National Justice*; which, Mr. *Lechmere*’s Speech in the House of Commons, on these Impeachments, the 9th of Jan. 1715. Vol. vi. p. 21 as disagreeable as it might be, when the Enemy’s Design was become so desperate and avowed, as to strike at the Crown upon the King’s Head, and involve the Nation in a Civil War, they could not exert themselves with too much Vigour. The

“ Spirit

their King and Country; and the People by a Cheerful Declaration of their Readiness to stand by the Government. And let all of Us, forgetting all Differences and Animosities, make this the great Contention, who shall act with the truest Zeal against the Common Enemy.

And God grant that We may All, in this Our Day, see the Things that belong to Our Peace, before they are hid from Our Eyes.

Novemb. 3.
1715.

Tho. Cantuar’
Joh. London.
Jonathan Winsbester,
Jo. Lichfield & Cov.
Ric. Peterborough.
W. Sarum.
Jo. Bangor,

W. Lincoln.
C. Norwich.
W. Ely.
Tho. Chichester.
Rich. Gloucester,
John Asaph.
Jo. Oxen.

Proceedings against the Earl of

“ Spirit which would be shewn in this Instance
 “ would animate their Friends ; and the Terror it
 “ would strike in their Enemies, would contribute
 “ as much to their Safety, as any other Preparation
 “ that had or could be made. He wish’d he could
 “ say, that this Rebellion was the Project of those
 “ only that appeared at the Head of it ; that it was
 “ the Work only of Papists, or of those few Pro-
 “ testants who were wicked or weak enough open-
 “ ly to join in it ; or that it was but a Plot of Yes-
 “ terday : For he thought it was a Plot of many
 “ Years Labour ; the necessary Consequence of the
 “ Measures that had been carried on for some Years
 “ past. To frame a right Judgment of this Rebel-
 “ lion, it was necessary to consider the natural Ten-
 “ dency of the publick Proceedings of late Years,
 “ and the Connection they bore with the present un-
 “ fortunate State of Things, when Men in sacred
 “ Functions became State Instruments, and their
 “ great Merit was under Pretence of asserting the
 “ Doctrines of the Church of *England*, to condemn
 “ the Revolution thereby, and undermine the Pro-
 “ testant Succession : These Practices had contribu-
 “ ted a great deal to the present Calamity ; for as
 “ the Designs of the Enemy grew more avowed,
 “ much Industry was used to inculcate the Notion
 “ of Hereditary Right, in Opposition to the Settlem-
 “ ent of the House of *Hanover* by Parliament :
 “ Those who made their Court best to Men in
 “ Power, were such who espoused this Opinion in
 “ the most notorious Manner : With what Ten-
 “ derness was a Divine of the Church of *England*
 “ [Mr. *Bedford*] treated for the most impudent Li-
 “ bel, [*The Hereditary Right asserted,*] that ever was
 “ published against any Government, that had either
 “ Will or Power to maintain itself? Though the Pu-
 “ nishment inflicted on that Gentleman was light
 “ enough, an Order from the Government was pro-
 “ cured, countersign’d by a Secretary of State to
 “ the Judges of the *Queen’s-Bench*, to supercede the
 “ ignominious Part of the Sentence, on Account of
 “ the sacred Function of the Criminal ; which might
 “ be interpreted a Licence and Protection from the
 “ Go-

" Government to Men in Holy Orders, to propa-
 " gate that destructive Position with Impunity. And
 " what Severities were at the same Time exercised
 " on those who had Courage enough to assert the
 " Interest of their Country, and the Protestant Suc-
 " cession? what Distinctions were made to elude
 " the Oaths made for the Security of the Govern-
 " ment? what Endeavours were used to possess
 " People with *false Fears of the Danger of the Church?*
 " what little Care was taken to instill into the Youth
 " of this Kingdom such Principles as were consis-
 " tent with the true Interests either of the Church or
 " State? These Things he looked upon to be the
 " Foundation of the Scheme which was by this Re-
 " bellion carrying on into Execution. The Disfa-
 " tisfaction and Uneasiness that were created by
 " them in the Minds of the People, made Way for
 " the Change that was desired. Another Part of the
 " Scheme, was to disable, as far as they could, those
 " Persons who had been most remarkable for sup-
 " porting the *Hanover* Succession. The great Ef-
 " fort was made at that *Great Man*, [*the Duke of*
 " *Marlborough, to whom he gives that Title four*
 " *Times in the Compass of half a Dozen Lines,*] who
 " was not only the Honour and Ornament of
 " his Country, but the Glory of the Age; Many
 " who heard him, remembered the Part he took in
 " Vindication of that *Great Man*, while his Cha-
 " racter was under Debate in that House: He could Vol. vi. p. 3
 " not forget the Rage with which he was punished;
 " or how much Stress was laid on obtaining the Cen-
 " sures of Parliament upon him. And though the
 " Aspersions thrown upon him, did not hurt that
 " *Great Man*, yet this was a very necessary Step to
 " put him out of the Way, whose very Name and
 " Appearance would have been sufficient to raise
 " Armies in favour of the Protestant Succession.
 " And he thought it a Reproach to the Kingdom,
 " that those groundless Aspersions cast upon him,
 " should remain upon the Journals of Parliament.
 " Another great Lord, [*Lord Viscount Townshend,*]
 " who was instrumental in procuring the Treaty of
 " Barrier and Succession, fell under the Violence
 " of

“ of those Times, and was prosecuted with uncommon Fury. He [*Lechmere*] had some Share in
 “ justifying this *Great Man* in that House, when he
 “ was voted an *Enemy to his Country*; and it was
 “ not the Barrier, but the Services he had done the
 “ Protestant Succession, that drew that Rage upon
 “ him. Two other Honourable Gentlemen, [Mr.
 “ *Stanhope* and Mr. *Walpole*,] who sat near him,
 “ had felt the Severity of those Times, occasioned
 “ by their distinguished Zeal and Firmness for the
 “ true Interest of their Country: That the Name
 “ of that General, [the Duke of *Ormond*,] for whose
 “ immediate Service the *Great Man* first mentioned
 “ was blemished, was become the Reproach of his
 “ Family and Country, by avowing the Service of
 “ the Pretender; and they might e’er long see him at
 “ the Head of an Expedition for establishing Popery
 “ and arbitrary Power. That the Secretary of State
 “ [the Lord Viscount *Bolingbroke*,] who distinguished
 “ himself in the Pursuit of the other *Great Lord*,
 “ had sufficiently explain’d his Designs; and the next
 “ News they expected to hear, was, that he had taken
 “ upon him the Character of a Minister to the
 “ Pretender. He looked upon disabling the great
 “ Assertors of the Protestant Interest, to be no small
 “ Part of the Scheme: And, in the mean Time,
 “ their Tools were carrying on their Work below
 “ Stairs, [*Westminster-Hall*,] and wronging those
 “ who appeared Favourers of the *Hanover* Succession.
 “ Charters of Corporations were attacked in
 “ an unprecedented Manner, and no Stone left un-
 “ turned to strengthen them in that Respect. But the
 “ Master-Strokes of this grand Scheme were yet behind:
 “ The surest Way to destroy a Government,
 “ has been always thought to be by its own Hands,
 “ that is, by the *Power and Authority of Parliament*;
 “ [This the Orator’s Enemies, as well as his Friends,
 “ will readily subscribe to:] Whereupon a Confederacy,
 “ by which the Liberties of *Europe* had been
 “ long sustained, was broke to Pieces by Votes obtained
 “ in that House, in a most extraordinary Manner:
 “ The Honour of the Nation, the Ballance of
 “ Power, and the Protestant Interest, were given up
 “ by

“ by a Peace, which restored *France* to its ancient
 “ formidable State : We were upon the Point of
 “ giving up the whole Trade of the Nation to the
 “ *French* King, who could make no suitable Re-
 “ turn, but by bestowing on us a Pretender bred up
 “ in his own Faith and Politicks; which nothing
 “ could have obstructed, but the many *miraculous*
 “ *Providences* that followed, [known only to this
 “ great Orator and his Friends; for there never was
 “ the least Appearance of a Plot or Design to de-
 “ feat the *Hanover* Succession till the late Queen’s
 “ Minister’s were brought in Danger of their Lives.]
 “ The King’s providential Accession to the Throne
 “ disappointed the immediate Execution of the
 “ Scheme, and quieted the Spirit of those Men
 “ [meaning the late Ministry] for a Time; [though
 “ if they ever had any Design of bringing in the Pre-
 “ tender, they could never have met with a more
 “ favourable Opportunity than at the Queen’s Death,
 “ when the whole Power of the Kingdom, both Ci-
 “ vil and Military, was in their Hands.] That the like
 “ Endeavours were used soon after his Majesty’s Ac-
 “ cession, to create a Disaffection against his Govern-
 “ ment, as had been before to prevent its taking place;
 “ and yet no one Instance had been assign’d through-
 “ out his Administration, that could offend any one
 “ but a *Jacobite*. His Majesty had done more for
 “ the Honour of the Church, and the true Interest
 “ of the Kingdom, than any of his Predecessors in
 “ three Times the Number of Years; [some few
 “ Proofs of it would have done well here.] His
 “ personal Virtues, and the Wisdom of his Govern-
 “ ment had retrieved the Honour and Reputation of
 “ his Kingdoms, that had been shamefully lost; [this
 “ is another glorious Assertion, supported by the like
 “ Evidence as the former.] No Instance could be
 “ assign’d of Hardship or Oppression to any one of
 “ his Subjects; or that could give a just Reason of
 “ Dissatisfaction: [How was it possible there should,
 “ under so able and uncorrupt a Ministry?] That
 “ from all these Considerations he should make a
 “ right Judgment of the Nature of this Rebellion,
 “ whence its Rise, how deep its Root, and to what
 “ Influences

“ Influences it was owing. That the Part the Lord
 “ *Derwentwater* and others had acted, was to be
 “ considered as the first Symptoms of that general
 “ Disorder, for which so much Foundation was
 “ laid ; for which Reason they ought to consider it
 “ as the Cause of the Nation, and take it into their
 “ own Hands, not trusting the Prosecution of it in
 “ other Hands ; for every one knew what Hazards
 “ Prosecutions in the ordinary Course of Justice
 “ were liable to ; and how certain soever the Suc-
 “ cess might be, it was obvious to every one, of what
 “ different Weight and Influence the Prosecutions
 “ of Parliament were, from those in the ordinary
 “ Forms : For here they engaged every Commoner
 “ in *Great Britain* as an immediate Party, against
 “ those who had carried a War into the Bowels of
 “ the Kingdom : That the Power of Impeachments
 “ was the most valuable and useful Priviledge that
 “ belonged to the Commons, at least, equal to that
 “ of giving Money : That they need not be appre-
 “ hensive of any Intricacies in these Proceedings :
 “ Impeachments were more plain, regular, and dis-
 “ intangled than any other Forms of Justice, and
 “ particularly excepted out of the late Statute of Treas-
 “ ons, which had very much fetter’d the ordinary
 “ Course of Proceedings : And he thought he could
 “ maintain, *That no Pardon under the Great Seal*
 “ *could discharge a Judgment obtained on an Impeach-*
 “ *ment of the Commons.* [But here he seems to be
 “ as much mistaken as in some other Conceits, if we
 “ may judge by the subsequent Practise.] He had
 “ heard, indeed, of a very low Distinction that had
 “ been coin’d without Doors, (*viz.*) *That the Par-*
 “ *don is not pleadable in Bar of an Impeachment, to*
 “ *prevent the Commons from examining the Offence ;*
 “ *but that it was pleadable after Judgment, and in*
 “ *Bar of Execution.* And whenever that Question
 “ should come properly before them, he would un-
 “ dertake to shew the Idleness and Absurdity of
 “ that Distinction, which he did not apprehend
 “ could be for the Advantage of the Crown, but the
 “ contrary. [No ordinary Paradox.]

“ If they wanted any farther Motives to make this Prosecution their own, he had a Paper in his Hand, which would fire the Thoughts of every Man there. It was the Pretender’s Declaration, that could not be read without the utmost Indignation, considering the personal Indignities in it cast upon the best of Princes. They could do no less, therefore, than make themselves the Prosecutors of those who avow’d the Cause of the Pretender, and set themselves at the Head of Armies in the Heart of the King’s Dominions: Here they could see how he treated the Commons themselves, representing them *as the most illegal and infamous Assembly of Men that ever met together*. These Considerations ought to invigorate their Proceedings; though he did not think that House ought to be govern’d by vindictive Considerations, but by such Circumstances only, as from their real Weight and Consequence called for the Interposition of the Commons. He was sensible the Commons had a great deal of Work upon their Hands from other Impeachments, [those of the Earl of *Oxford*, Lord *Strafford*, &c.] which they had entered upon; but the present Situation and Conjunction of Affairs, made it necessary to give a Preference to the Prosecution of those Lords who had been taken in open Rebellion; And he did therefore impeach *James* Earl of *Derwentwater*, of High-Treason; which Impeachment he undertook to make good.”

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Upon the like Motions it was resolv’d to impeach *William* Lord *Widrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*.

On Thursday the 9th of *February*, the Lords being come down from their House to the Court erected in *Westminster-Hall*, a Proclamation for Silence was made: After which his Majesty’s Commission was read, all the Peers standing uncovered.

Proceedings against *James* Earl of *Derwentwater*, &c. for High Treason.

The

The COMMISSION.

Georgius Rex,

The Commission.

GEORGIUS Dei Gratia Magna Britannia Franciæ & Hiberniæ Rex, fidei Defensor, &c. Prædilecto & fideli Confiliario nostro Willielmo Domino Cowper Cancellario nostro Magnæ Britannia, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præsentî Parlamento per Milites, Cives, & Burgenses in Parlamento nostro Assemblat' de alta Proditione per ipsos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nithisdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Willielmum Vicecomitem Kenmure, & Willielmum Dominum Nairn, commis' & perpetrat' in nomine ipsorum Militum Civium & Burgensium & nomine omnium Communium Regni nostri Magnæ Britannia impetiti & accusati existunt; & ipsi prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram nobis in præsentî Parlamento de Proditione prædict' se esse culpabiles separatim cognoverunt: Nos considerantes quod Justitia est virtus excellens & altissimo complacens Volentesq; quod prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipsi ut præfertur impetiti' accusati' & convicti' existunt coram Nobis in præsentî Parlamento nostro secundum Legem & Consuetudinem hujus Regni nostri Magnæ Britannia & secundum Consuetudinem Parlamenti audiantur sententientur & adjudicentur ceteraq; omnia quæ in hac parte pertinent debito modo exercentur & exe-

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Et exequantur ac pro eo quod Proceres Et Magnates in presenti Parlamento nostro assembleti Nobis humilime supplicaverunt ut Senescallum Magnae Britanniae pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspeditione Et industria vestris plurimum confidentes Ordinavimus Et Constituimus vos ex hac causa Senescallum Magnae Britanniae ad Officium illud cum omnibus eidem Officio in hac parte debitis Et pertinentibus (hac vice) gerendum occupandum Et exercendum. Et ideo vobis Mandamus quod circa praemissa diligenter intendatis Et omnia quae in hac parte ad Officium Senescalli Magnae Britanniae pertinent Et requiruntur, hac vice facitis, exerceatis Et exequamini cum effectu. In cujus rei Testimonium has Literas, nostras fieri fecimus Patentes, Teste me ipso apud Westm' nono die Februarii Anno Regni nostri Secundo.

Per ipsum Regem propria Manu Signat'

WRIGHTE.

Then a Proclamation was made for the Lieutenant of the *Tower* to bring his Prisoners to the Bar: Whereupon *James Earl of Derwentwater*, and the rest of the Lords above-named, were brought to the Bar, the Ax being carried before them with the Edge from them by the Gentleman Gaoler. The Prisoners after kneeling, bow'd to the Court: Which Complement the Court having returned, the Articles of Impeachment, which were carried up by Mr. *Lechmere*, were read.

ARTICLES of Impeachment of High Treason exhibited by the Commons of Great Britain against *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Winton*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*.

WHEREAS for many Years past a most wicked Design and Contrivance has been formed and carried on, to subvert the Ancient and Established Government

Government, and the good Laws of these Kingdoms, to extirpate the true Protestant Religion therein established, and to destroy its Professors, and instead thereof to introduce and settle Popery and Arbitrary Power; in which unnatural and horrid Conspiracy great Numbers of Persons of different Degrees and Qualities have concerned themselves and acted, and many Protestants, pretending an uncommon Zeal for the Church of *England*, have joined themselves with professed Papists, uniting their Endeavours to accomplish and execute the aforesaid wicked and traiterous Designs:

And whereas it pleased Almighty God in his good Providence, and in his great Mercy and Goodness to these Nations, to crown the unwearied Endeavours of his late Majesty King *William* the Third, of ever-glorious Memory, by making him the Instrument to procure the Settlement of the Crown of these Realms in the illustrious House of *Hanover*, as the only Means, under God, to preserve our Religion, Laws, and Liberties, and to secure the Protestant Interest of Europe; since which happy Establishment the said Conspirators have been indefatigable in their Endeavours to destroy the same, and to make way for the vain and groundless Hopes of a spurious Impostor and Popish Pretender to the imperial Crown of these Realms:

And to accomplish these Ends, the most immoral, irreligious, and unchristian-like Methods have been taken; but more particularly in the last Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were used by the said Conspirators to prejudice the Minds of the Subjects of this Realm against the Legality and Justice of the said Settlement of the Crown; and for that Purpose the holy Scriptures were wrested, and the most wholesome Doctrines of the Church of *England* perverted and abused by Men in holy Orders in the most publick and scandalous Manner, in order to condemn the Justice of the late happy Revolution, and thereby to sap and undermine the Foundation of the said happy Establishment: And the most notorious Instruments of these wicked Purposes were countenanced

tenanced by particular Marks of publick Favour and Distinction; false and dangerous Notions, of a sole hereditary Right to the imperial Crown of these Realms, were propagated and encouraged by Persons in the highest Trust and Employments; contrary to the ancient, undoubted, and established Laws of these Kingdoms; jesuitical and scandalous Distinctions were invented, and publicly inculcated, to enervate the Force and Obligation of those Oaths which had been contrived in the plainest and strongest Terms, by the Wisdom of Parliament, for the Security of the said Establishment: And to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators, of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths: Groundless Fears of the Danger of the Church of *England* were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants. Vol. vi. p. 71

By all which, and many other such ungodly Practices of the said Conspirators, the most causeless and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants, were much disquieted.

But nevertheless, these dishonest Methods were pursued by the said Conspirators with indefatigable Industry, as the only means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Ballance of Power in Europe, were further Steps necessary to compleat the Designs of the said Conspirators; and the same being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the protestant Succession was thereby brought into the most imminent Danger; and by these, and other pernicious Measures, the Destruction so long intended by the said Conspirators for these poor Nations, seemed near at hand.

At which Time, and under which most deplorable Circumstances, it pleased Almighty God in his infinite Wisdom to call to himself the late Queen *Anne*; and by a Concurrence of many most won-

derful Providences, to give a quiet and peaceable Accession to his present most gracious Majesty to the Throne of his Ancestors, to which he was received with one full Voice and Consent of Tongue and Heart, and the united Joy of every good Subject and good Protestant, as their only lawful and rightful Liege Lord. And altho' from the Moment his Majesty ascended the Throne to this Day, his Reign has been one Series of Wisdom, Justice, and Clemency, his Labours constant, unwearied and successful, to retrieve the Honour and Reputation of these Nations, to re-establish the Trade and recover the Wealth of his Kingdoms; and altho' all imaginable Encouragement has been given to the Church of *England*, and all Tenderness shewn even to his Popish Subjects, and his constant Care has been to procure the universal Good of his People, nevertheless the said Conspirators have, by the most vile and impious Methods, renewed their Endeavours to throw these Kingdoms into the utmost Confusion, and to entail endless Miseries on us and our Posterities: For these Ends, many of the above-mentioned most wicked and dangerous Practices have been repeated with the utmost Industry and Inveteracy; to delude, disorder, and corrupt the Minds of his Majesty's good Subjects, the most groundless Jealousies have been fomented against his wise and happy Administration; and in many Parts of his Kingdoms, the most unnatural, unexampled Riots and Tumults, by the secret and malicious Endeavours of the said Conspirators, have been procured, stirred up, and encouraged against his peaceable Protestant Subjects, under false Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and seduce them from their Allegiance, and prepare them for an open Rebellion.

And the said Conspirators, having at length resolved to deprive these Nations of the invaluable Blessings which they now enjoy under the wise and gentle Reign of his present most Gracious Majesty King *GEORGE*, and of the certain Prospect of Happiness which they have for their Posterity in a Succession of Princes derived from himself, did contrive, confederate, and resolve to put their most malicious, wicked, and traitorous Designs into immediate

mediate Execution ; for which Purpose, *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn*, together with *Thomas Forster, jun. the Lord Charles Murray, Edward Howard, Thomas Errington, John Clavering, William Shaftoe, Sir Francis Anderton, Ralph Standish, Richard Townley, Thomas Butler, Thomas Walton, Gabriel Hasket, Richard Gascoigne*, and divers other Persons, as false Traitors to his present most sacred Majesty King **GEORGE**, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they, as good and faithful Subjects, owed to his said Majesty, did in or about the Months of *September, October, or November, 1715.* most wickedly, maliciously, falsely and traiterously imagine and compass the Death of his most sacred Majesty.

And for the accomplishing and executing their said traiterous Purpose, they the said *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn*, did, in or about the said Months, or some of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterously agree, confederate, conspire and resolve, together with many other evil-disposed Persons, to raise, excite, and levy, within the Counties of *Teviotdale, Northumberland, Cumberland*, and the County-Palatine of *Lancaster*, and elsewhere within this Kingdom, a most cruel, bloody, and destructive War against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his royal State, Crown, and Dignity.

And the said *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmure, William Lord Nairn*, their Accomplices and Confederates, in or about the Months aforesaid, in the Counties aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and with them did assemble

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in a warlike and traiterous Manner, in order to raise Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition, and warlike Instruments, at the Times and Places aforesaid, or some of them, did form and compose, or did assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for and in Behalf and in Favour of the said Pretender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times, and Places aforesaid, and at divers other Times and Places within this Kingdom, did maliciously and traiterously make, levy, and raise War and Rebellion against his most sacred Majesty; and in a warlike and hostile Manner did march through and invade several Parts of this Kingdom, and did unlawfully take and seize the Horses and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty, and in other Places did take and seize from his Majesty's faithful Subjects Guns, and other warlike Instruments, for the carrying on their traiterous Purposes.

And the said last-mentioned Conspirators, their Complices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed in the most publick and solemn Manner, as King of these Realms, and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize, from his Majesty's Officers of the Revenue the publick Money, for the Use and Service of the said Pretender. And though many of the said Conspirators are avowed Professors of the Popish Religion, yet the more effectually to cover and disguise their most wicked and traiterous Designs, and to delude his Majesty's Subjects, they did prevail on and procure several Men in holy Orders, Ministers of the Church of *England*, and who had before that Time abjured the said Pretender, to accompany, countenance, and abet the said most traiterous Enterprize; and in several Places in the Counties aforesaid, where the said Conspirators, their

their Complices and Confederates then were, to pray for the said Pretender in the publick Churches as King of these Realms.

And the said last-mentioned Conspirators, their Accomplices and Confederates, did on or about the 9th, 10th, 11th, 12th, or 13th of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston* in the County-Palatine of *Lancaster*, against his Majesty, and did then and there, in a warlike and hostile Manner, levy War, oppose, engage, and fight against his Majesty's Forces, and did then and there cause and procure a miserable and horrid Slaughter and Murther of many of his Majesty's faithful Subjects.

All which Treasons and Crimes above mention'd were contrived, committed, perpetrated, acted, and done, by the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Winton*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, *William Lord Nairn*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown, and Dignity, and contrary to the Duty of their Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which Treasons and Crimes the Knights, Citizens, and Burgeesses in Parliament assembled, do in the Name of themselves, and of all the Commons of great Britain, impeach the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Winton*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, *William Lord Nairn*, and every of them.

And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any Time hereafter any other Accusations or Impeachments against the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Winton*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*, or any of them; And also of replying to the Answers which the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Winton*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*, or any of them, shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall

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shall be by them exhibited according to the Course and Proceedings of Parliament; and do pray, that the said *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmare, and William Lord Nairn*, be put to answer all and every the Premises; and that such Proceedings, Examinations, Tryals, and Judgments may be upon them, and every of them, had and used as shall be agreeable to Law and Justice.

To these Articles the impeach'd Lords return'd their several Answers, in the following Manner.

On the 19th of *January James Earl of Derwentwater* was brought to the Bar of the House of Lords by the Gentleman Usher of the Black Rod; where he kneeled until the Lord Chancellor directed him to rise, and his Lordship demanded of him, whether he was ready to put in his Answer; which he said he was; and deliver'd the same at the Bar; which Answer was read as follows:

The ANSWER of JAMES Earl of Derwentwater to the Articles of Impeachment of High-Treason, exhibited against him by the Honourable the Knights, Citizens, and Burgeſſes of Great Britain in Parliament aſſembled.

TO a Charge of ſo high and heinous a Nature, the ſaid Earl cannot answer without the deepeſt Concern and Affliction, which becomes more weighty from the Share the Honourable Houſe of Commons have been pleaſed to take in the Accuſation. He aſſures himſelf, however, that great Aſſembly doth not engage in the Proſecution of an Offence, ſo open to Conviction in the ordinary Course of Law, with Deſign to intercept that Mercy which the Earl, from the Report of his Maſteſty's natural Goodneſs, had Reaſon to expect. It would be a Thought unworthy any Member of that auguſt Body, to imagine he could have the leaſt Deſire of ſpilling the Blood of any of his Fellow-Subjects, whom his Maſteſty's great Wiſdom ſhould think a fit Object of his Mercy; the ſaid Earl therefore hopes that his Proſecution is taken out of the
common

common Course of Justice, with Intentions, that if in his particular Case there shall appear any Circumstances inducing Favour or Compassion, both your Lordships and the Commons may be Intercessors with his Majesty for Grace towards him; whereby the Exercise of the Royal Mercy, upon which the Earl depended (which amongst all the Virtues of the Crown most endears a Monarch to the Love and Affection of his People) may be extended in such Manner, as may demonstrate that Clemency for which his Majesty is so greatly renown'd, and not encourage any to offend upon the Presumption of it for the future. The said Earl acknowledges, with a real Sorrow, that at the Time in the Articles mention'd he was in Arms, and with others did march through and invade several Parts of this Kingdom; and confesses he is thereby guilty of the Offence wherewith he is charg'd in the said Articles: But if any Offence of that Kind was ever attended with Circumstances which might move Compassion, the said Earl hopes he may be intitled to it? He begs Leave to inform your Lordships, that his Temper and Inclination dispos'd him to live peaceably under his Majesty's Government; and he never had the least Prejudice or Malice against his Person, nor was he ever heretofore concern'd in or privy to any Design or Contrivance to subvert or disturb the established Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accomplish any of those Ends, he was absolutely a Stranger to them; nor did he now engage in this unhappy Undertaking upon any previous Concert or Contrivance for any such Purpose; but being young and unexperienced, he rashly, and without any Deliberation, engaged himself to meet at *Plainfield*, in *Northumberland*, on Assurance that many of his Relations and Acquaintance would appear there. That his Undertaking was sudden, appears, in that he engaged in it without any previous Preparation of Men, Horses, Arms, or other warlike Accoutrements; and as the said Earl cannot be justly reproached with any cruel, severe, or harsh Action during the Continuance in Arms, so he took the first Opportunity that offer'd of submitting to the King's Mercy. After the sudden Skirmishes at *Preston*, the said Earl, with others, was solicitous

to prevent any further Destruction of the Lives of his Majesty's Subjects, and instrumental to induce all in Arms to submit themselves to the King, provided they might be secured of their Lives. One of his Majesty's Officers, sent from the General, gave them Encouragement to believe, that the Surrender of themselves would be the ready Way to obtain the King's Mercy: In Confidence whereof, when a Cessation was agreed on, the said Earl offer'd himself to become one of the Hostages for them till next Morning; in which Time he received farther Assurances from the Officers, that the King was a Prince of known Clemency; that this was a distinguishing Part of his Character; and that the free Surrender to Mercy, would be the proper Means to obtain it. The said Earl believes his Majesty's Officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at *Preston* to make their Way through his Majesty's Forces; but this Attempt must have occasion'd the Loss of many Lives, and might have been productive of ill Consequences to the Government, which the said Earl was desirous to prevent; and when the Time agreed on for the Cessation was near expir'd, and General *Wills* seem'd uneasy in not having receiv'd any Message from those in the Town, the said Earl writ a Letter to exhort them to surrender to the King's Mercy; and at the same Time declared to the said General, and other Officers, that whatever happened, he was determined to continue with them, and rely entirely on his Majesty's Clemency and Goodness, which he had Encouragement to expect; and in such Circumstances the said Earl cannot distrust your Lordships, or the Commons' Readiness, to use their Mediation for Mercy on his Behalf; which will lay him under the highest Obligations of Duty and Affection to his Majesty, and perpetual Gratitude to both Houses of Parliament.

DERWENTWATER.

The material Words of this Answer appearing not to be sufficiently express and clear, the Lord Chancellor ask'd the Earl of *Derwentwater*, if he meant by the said Answer to plead Guilty to the said Articles

Articles of Impeachment. The Earl said, he did; and submitted to the King's Mercy; and humbly desired their Lordships Intercession to his Majesty. And his Answer and Plea was recorded accordingly; upon which he withdrew.

Then the Lord *Widdrington* was brought to the Bar; and having there also kneeled, was by the Lord Chancellor ask'd the same Question as the Earl of *Derwentwater*; and he likewise delivered in his Answer; which was read as follows.

The ANSWER of WILLIAM Lord Widdrington to the Articles of Impeachment of High Treason, exhibited against him by the Honourable the Knights, Citizens, and Burgesses of Great Britain in Parliament assembled.

IT is with inexpressible Concern and Affliction the said Lord appears before this August Assembly, charged with Crimes of the most heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make use of all Manner of Defence, especially in the Case of Life, yet as he surrendered himself at *Preston*, entirely relying on his Majesty's Mercy, so he is now resolved not to take any Measures, which may argue the least Diffidence of that Mercy, or of your Lordship's Goodness; and therefore the said Lord confesses, he is guilty of the Treason wherewith he is charged in the said Articles. And after having thus freely acknowledged his Offence, he begs Leave to lay his Case before your Lordships, and humbly hopes, when the particular Circumstances are considered, it will not be thought to merit the most rigorous Punishment, but that both your Lordships and the Honourable House of Commons will look upon him, as a proper Object of his Majesty's Clemency; and he humbly hopes he may not be thought the less unworthy of Favour, in that he never before offended, nor was at any Time privy to or acquainted with any Design or Contrivance to destroy or disturb the Established Government, the Laws or Religion of this Kingdom, but came unawares into this sudden and unpremeditated Action; for although he had met with publick Rumours and Reports of intended Invasions from Abroad, and Insurrections at Home,

Home, yet he never knew, or any other Way heard of any formed Design against the Government, till he was told the Night before of a Meeting intended at *Plainfield*, in *Northumberland*, on the 6th of *October* last; and being soon after informed, that almost all his Neighbours and Acquaintance had there met in Arms, he took a hasty and inconsiderate Resolution of joining them; nor was he in any sort prepared for such an Undertaking, having only some of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horses than he constantly kept for several Years before, and nothing but the Report of so many of his Friends being engaged, could have hurried him on to an Enterprize so unaccountably rash and unjustifiable; and he is willing to hope your Lordships will esteem it some Alleviation of his Crime, that in a Commotion of that Nature, there was so little Violation of the Rights and Properties of those who opposed them; for he believes few Instances can be found where such a Multitude continued so long in Arms, without doing greater Acts of Violence and Injustice: The said Lord cannot charge himself with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes that it was thence owing, in some Measure, that there was shewn all along greater Marks of Moderation and Humanity, than is common in such a Warlike and Hostile Proceeding. The Suddenness of the Attack at *Preston*, without any previous Summons, admitted no Time for mediating a Submission, before the Loss of that Blood, which was there unfortunately spilt; but after the Heat and Surprize of the first Action was over, a Cessation of Arms was desired, and upon the mutual Messages which then passed, the Officers sent from the General encouraged them to believe the surrendering themselves would be the ready Way to obtain the King's Mercy, and gave them repeated Assurances, that they submitted to a Prince of the greatest Clemency in the World: Upon these Hopes and Assurances, they made a general Surrender of themselves to the King; and the said Lord may justly take Notice to your Lordships, that as he was the last who took up Arms, so he was the first who procured a Meeting of the chief Persons among them,

in order to lay them down ; and cannot doubt but your Lordships, and the Honourable House of Commons, will think it equitable to make some Distinction between an obstinate Resistance, and an early and humble Submission, whereby the Peace and Tranquility of this Part of his Majesty's Dominions, was entirely restor'd. Nature must have started at yielding themselves up to a certain and ignominious Death, when it must be acknowledged that it was not impracticable for many of them to have escaped ; and it was possible so great a Number grown desperate might have obtained further Success, and thereby prevented the so-speedy suppressing that Insurrection ; but the said Lord, and the rest, having with the utmost Confidence relied on the Assurances of his Majesty's great Clemency, and the Hopes of Mercy which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earnestness to implore the Intercession of your Lordships and the Honourable House of Commons with his Majesty for that Mercy on which they wholly depended ; and as he doth not know where Mercy was refused to those who so early, and with so much Resignation submitted to it, so he humbly hopes your Lordships may be induced to think, that the Exercise of this Divine Virtue by his Majesty towards those who cast themselves at his Royal Feet, upon the sole Prospect and Expectation of it, will appear no less glorious to his Majesty, and prove no less advantageous to the future Quiet and Tranquility of his Government, than any Examples of Justice in such a Case can be likely to do : And whatever Marks of Goodness and Favour his Majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest Ties of Gratitude, to demonstrate in the future Course of his Life, the most constant and inviolable Duty to his Majesty, and the most real Esteem and Veneration for your Lordships and the Honourable House of Commons.

WIDDRINGTON.

Then the said *Widdrington* being asked if he had any Thing farther to say, he begg'd to be excus'd all Imperfections in his said Answer ; said he had
been

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been indispos'd with the Gout in his Stomach, and was not able to employ himself in preparing his Answer till the Night before, and finished it but that Morning; and humbly implor'd their Lordship's Intercession to his Majesty for Favour and Mercy; and his Answer and Plea being recorded accordingly, he withdrew.

Then the Earl of *Nithisdale* was brought to the Bar; and having there likewise kneeled, was asked the same Question as the Earl of *Derwentwater*. And he also deliver'd in his Answer; which was read as follows:

The ANSWER of WILLIAM Earl of Nithisdale to the Articles of Impeachment of High Treason, exhibited against him by the Honourable the Knights, Citizens, and Burgeses of Great Britain in Parliament assembled.

IT is with the utmost Confusion the said Earl appears at your Lordship's Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High Treason: He humbly begs Leave, in Extenuation of his Crime, to assure your Lordships, that he was always a zealous Assertor of the Liberties of his Country, and never engaged in forming or carrying on any Design to subvert the ancient established Government, and the good Laws of this Kingdom; but being summoned by those entrusted with the Administration of the Government in *Scotland* to appear at *Edinburgh*, and being assured if he went thither he should be made close Prisoner, he did not obey the Summons, but in all humble Manner apply'd for their Indulgence in dispensing with his being committed to Gaol, offering to give any Bail for his peaceable and quiet Behaviour; which being refused, and being at that Time in so ill a State of Health, that a Confinement in *Edinburgh Castle* would have endangered his Life, he was forced to abscond, and kept private till several of the Persons mentioned in the said Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the said Earl lay concealed; and then he inconsiderately and unfortunately (with four of his Domesticks, and no other Person whatsoever) joined them, and proceeded in their Company to the

the Places in the said Articles of Impeachment mentioned ; but he knew nothing of the intended insurrection till they were actually in Arms. The said Earl is deeply sensible of his great Offence, and not affecting Delay, nor being willing to give your Lordships, or the Honourable House of Commons, any unnecessary Trouble, he does with a Sorrow equal to his Crime confess that he is guilty of the Treason in the said Articles of Impeachment contain'd, and throws himself at his Majesty's Feet, imploring his Royal Mercy ; and to incline his Majesty thereto, and induce your Lordships to recommend him as an Object thereof, he begs Leave to inform your Lordships, that when he, and the rest that were with him at *Preston*, had engaged in a Battle, a Cessation of Arms being agreed to, they had Intimations from his Majesty's Officers, that if they submitted, they might expect the King's Mercy ; and History abounding with Instances of Conditions stipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by such Encouragement, together with the Consideration of his Majesty's known Clemency, to surrender themselves Prisoners ; whereby the Lives of great Numbers of his Majesty's good Subjects were saved, which by an obstinate Resistance would inevitably have been destroy'd ; and, therefore, he most humbly begs your Lordships would be pleased to represent his Case to his Majesty in the most favourable Manner ; not doubting, but, by your Lordships powerful Intercession, he shall find, that as he performed the Duty of a good Christian, in concurring to prevent Effusion of Christian Blood, so he acted the Part of a wise Man in relying upon a Mercy so extensive as that of his Majesty : And he presumes, when the Honourable House of Commons are appriz'd of the Nature of his Case, they will not interpose to prevent him from having a Share in the Benefit of that Mercy.

NITHSDALE.

And the Earl of *Nithisdale* being asked, if he had any Thing farther to say ; he said, he had nothing, but to implore the King's Mercy. And his Answer
and

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and Plea was recorded accordingly; and he withdrew.

Then the Earl of *Carnwath* was brought to the Bar; and having there likewise kneeled, was asked the same Question as the Earl of *Derwentwater*.

He said, he had no Answer in Writing; but desired to throw himself on the King's Mercy; and humbly implored their Lordships Intercession to his Majesty on his Behalf; and assured the House, if the same were granted, he should think himself obliged to live under the strictest Ties of Loyalty to his Majesty. And as to the said Articles, he said, he was guilty of the High Treason contained in the said Articles of Impeachment against him. And the said Plea was recorded accordingly; and he withdrew.

Then the Viscount *Kenmore* was brought to the Bar; and having there kneeled also, was asked the same Question as the Earl of *Derwentwater*.

He said, he had no Answer in Writing; but was guilty of the Charge of High Treason contained in the Articles of Impeachment against him; and begged the House would intercede with his Majesty for Mercy. And his Plea was recorded accordingly; and he withdrew.

Then the Lord *Nairn* was brought to the Bar; and having there also kneeled, was by the Lord Chancellor asked the same Question as the Earl of *Derwentwater*.

He said he threw himself upon the King's Mercy; and begged the Intercession of this House to his Majesty. And as to the Articles of Impeachment exhibited against him, he said he was guilty of the High Treason contained in the said Articles. And his Plea was recorded accordingly. Then he delivered in a Petition at the Bar; and the same was read as follows:

To

To the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

The Humble Petition of William Lord Nairn.

Sheweth,

THAT your Petitioner was educated, and hath always continued a Protestant, according to the Discipline to the Church of *England*; and though, by Reason of some mistaken Principles he unwarily imbib'd in his tender Years, he did not in all Respects conform to the late Revolution, lying under the less Necessity, for that he had married an Heiress, in whom all the Right of your Petitioner's Estate is invested; and though he never took the Oaths, yet he always peaceably submitted to, and lived quietly under the Government as by Law established, until the breaking out of this Rebellion, in which your Petitioner was inadvertantly involv'd, but not before the Lord *Mar* and his Adherents had, for a considerable Time, made themselves Masters of *Perth* and *Dunkeld*, and thereby surrounded your Petitioner's whole Estate, and came to your Petitioner's House, lying in the Middle between those Places. Your Petitioner heartily repents of this rash Undertaking, and solemnly declares he knew nothing of any previous Consultations or Conspiracies in Favour of the Pretender, before he actually appeared in Arms; nor knew any Thing about crossing the *Forth*, until the Morning he was sent over under *Macintosh's* Command; and then was so far from approving of that Expedition, that though to avoid the Imputation of Cowardice he would hazard his own Person therein, your Petitioner order'd back all his Dependants, and was only attended by his Son and four Servants, who would not leave him in a Time of Danger, though often desired; nor was your Petitioner privy to any Designs of marching into *England*; for having been bred a Seamen, he had no Pretensions to Knowledge in the Land Service.

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Your Petitioner being now sensible of his Errors, hath pleaded guilty to the Articles of Indictment of High Treason, exhibited against him by the Honourable House of Commons, and thrown himself at his

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his Majesty's Feet, humbly beseeching your Lordships, in Commiseration of the deplorable Circumstances of your Petitioner and his twelve Children, to recommend him to his Majesty for that Mercy, which at the Time of his Surrender he was made to believe he might reasonably expect.

This will lay your Petitioner and his Posterity under the greatest Obligations of Duty and Gratitude to his Majesty, and bind them for ever to bless your Lordships, as the merciful Instruments of procuring such a gracious Deliverance.

And your Petitioner shall ever pray, &c.

NAIRN.

And being asked if he had any Thing farther to say, he said he had not; and withdrew.

The House of Commons having demanded Judgment against the Impeached Lords, who had pleaded guilty, and the 9th of *February* being appointed for that Solemnity, the Lords came from their House to their Court erected in *Westminster-Hall*, where having taken their respective Places, his Majesty's Commission, appointing the Lord *William Cowper*, Lord High Chancellor of *Great Britain*, to be Lord High Steward, for giving Judgment against the Impeached Lords, was read; and his Grace having removed from the Wool-Pack to an armed Chair, placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose, and then seated himself in the Chair, and delivered his White Staff to the Gentleman Usher of the Black-Rod, who stood on his Right-Hand, and the Seal-Bearer holding the Purse on his Left.

Silence being commanded by the Serjeant at Arms, *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *Robert Earl of Carnwath*, *William Viscount Kenmare*, and *William Lord Nairn*, were all brought to the Bar by the Deputy-Governor of the *Tower*, having the Ax carried before them by the Gentlemen Gaoler, who stood with it on the Left-Hand of the Prisoners, with the Edge turned from him. The Prisoners, when they approached the Bar, after kneeling, bowed to his Grace the Lord High Steward, and to the House of Peers,

Peers ; which Compliment was returned to them by his Grace and the Peers, and the Articles of Impeachment exhibited by the Commons, as above inserted, were read. After which they were severally asked by the Lord High Steward, what they had to say why Judgment should not pass upon them according to Law, beginning with the Earl of *Derwentwater* ; who returned the following Answers.

I Only humbly beg Leave of my Noble Peers to repeat a few Circumstances, mentioned in my Answer to the Articles of Impeachment, exhibited against me by the Honourable House of Commons.

Earl of *Derwentwater's* Answer.

But the Terrors of your Lordship's just Sentence, which at once deprive me of my Life and Estate, and compleat the Misfortunes of my Wife and innocent Children, are so heavy upon my Mind, together with my Unexperience, that I am scarce able to alledge what may extenuate my Offence, if any Thing can do it. I have confest myself Guilty: But, my Lords, that Guilt was rashly incurr'd without any Premeditation, as I hope your Lordships will be convinced by one Particular: I beg Leave to observe, I was wholly unprovided with Men, Horses, Arms, and other Necessaries, which in my Situation I could not have wanted, had I been privy to any formed Design. As my Offence was sudden, so my Submission was early: When his Majesty's General thought fit to demand Hostages for securing the Terms of the Cessation, I voluntarily offered myself; without which the Cessation might possibly have proved ineffectual: And whilst I continued Hostage, the great Character of his Majesty's Clemency, and the repeated Encouragement I had to hope for Mercy, by surrendering to it, soon determin'd me; and I accordingly declared my Resolution to remain with his Majesty's Forces, and from that Time submitted myself to his Goodness, on which I still entirely depend. I humbly hope to obtain the Mediation of your Lordships, and of the Honourable House of Commons, in my Behalf; solemnly protesting my future Conduct shall shew me not altogether unworthy your Generous Compassion for my Life, which is all I can beg of his Majesty.

Lord Widdring-
ton's Answer.

MY Lords, I have abandoned all Manner of Defence ever since I first surrender'd myself to his Majesty's Royal Clemency, and only now beg Leave to repeat to your Lordships some Circumstances of my unhappy Case, which I have already set forth in my Answer.

Your Lordships see before you an unfortunate Man, who, after leading a private and retired Life for many Years, has by one rash and inconsiderate Action expos'd himself and his Family to the greatest Calamities and Misery, and is now upon the Point of receiving the severest Sentence directed by any of our *English* Laws.

I do protest to your Lordships, that I was never privy to any concerted Measures against his Majesty's Royal Person, or the established Government. As to the Insurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd; and being soon after informed that all my Neighbours and Acquaintance had met in Arms, a Crowd of confused and mistaken Notions hurried me at once into a precipitate Resolution of joining them; a Resolution, which I must own I could never since calmly reflect upon, without Part of that Confusion I find myself under in the publick Acknowledgment of so much Rashness and Folly. After thus plunging out of my Depth, as unprepared for such an Enterprize, as the Action was unpremeditated, I cannot, for my own Particular, upon the strictest Recollection, charge myself with any Violation of the Properties of my Fellow-Subjects; but on the contrary, I always endeavour'd to encourage Humanity and Moderation during the whole Course of our miserable Expedition: And in order to make the best Attonement in my Power for the great Fault I had been guilty of, I can justly say, that I was in no small Degree instrumental in procuring a general Submission to his Majesty. But, my Lords, however willing or desirous, either I or any others might be to put a speedy End to those unfortunate Troubles, Self-Preservation, the first and most powerful Law of Nature, would have rendered the Proposal vain and fruitless, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and assured us, we submitted to a Prince of the greatest

greatest Clemency in the World. These Hopes, and this Assurance, answer'd the strongest Objections, overcame all remaining Difficulties, and gave the finishing Stroke to a general Surrender, whereby the further Effusion of *British* Blood was prevented, and a perfect Tranquility restored to these Parts of his Majesty's Dominions.

My Lords, as this my first Attempt was rash and unpremeditated, as I always used and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obstinately persist in my Fault, but was the first who propos'd an early Submission to his Majesty, I humbly hope my unhappy Case, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raise a generous Compassion in your Lordships, and the Honourable House of Commons; and I most earnestly entreat both your Lordships, and that Honourable House, to become Intercessors with his Majesty in my Behalf, for that Mercy which I was encouraged to hope for when I first surrendered, and which I have ever since with the utmost Confidence relied upon.

I have only to add my most solemn Assurance before this August Assembly, that no future Time shall ever find me wanting in the most inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and restores a Father to five miserable and distressed Orphans; and I shall always retain the highest Esteem and Veneration for your Lordships and the Honourable House of Commons.

MY Lords, I have confessed myself guilty, relying only on his Majesty's Mercy; and I beg Leave to assure your Lordships, I was never privy to any Plot or Design against his Majesty's Person or Government, and was unprovided with any Necessaries for such a Purpose; but rashly and inconsiderately, with only four of my Servants, joined those who appeared in Arms in my Neighbourhood, and was one of the last who went unto them.

Lord Nithisdale's
Answer.

At *Preston*, my Lords, his Majesty's Generals gave great Hopes and Encouragement to believe, that surrendering to his Majesty's Mercy was the ready Way to obtain it, with repeated Assurances that his Majesty was a Prince of the greatest Clemency.

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Upon those Hopes and Assurances I submitted myself, and still entirely depend on his Majesty's Goodness, earnestly beseeching your Lordships, and the Honourable House of Commons, to intercede with his Majesty on my Behalf.

And I solemnly promise your Lordships, I shall during the Remainder of my Life pay the utmost Duty and Gratitude to his most Gracious Majesty, and the highest Veneration and Respect to your Lordships and the Honourable House of Commons.

*Lord Carnarvon's
Answer.*

MY Lords, I shall not trouble this great Assembly with a Repetition of what I said when formerly before your Lordships and his Majesty's Council.

I hope these Noble Lords entertain that favourable Opinion of my sincere Dealing then, as to believe that want of Experience and Knowledge of the Laws, was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only Thing I can hope or wish for, is his Majesty's Mercy : He has the Character of a merciful Prince : Should it please him to think me a proper Object for it, (tho' I must confess myself a very unworthy one,) all I can say, my Lords, is, that the Remainder of my Life shall convince his Majesty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body the Peerage, now expecting your Lordships Judgment, as to Life or Death : Should it be for Life, my Demeanour and Carriage for the future will be such, as none of your Lordships shall be ashamed of having shew'd me Compassion : But should it be for Death, God's Will be done. To my last Hour I shall pray for the Nation's and your Lordships Prosperity, having this Comfort in my present Distress, that your Lordships are my Judges at this Tribunal : And yet a greater Comfort have I, that I am soon to appear before a Greater, where I can't despair of finding Mercy and Forgiveness for all my Sins.

I beg God Almighty's Pardon for them : I have already ask'd his Majesty's, and I do it now. And I do humbly beg Leave, once more, and perhaps
the

the last Occasion that ever I shall have, to desire that your Grace, this Noble House, and the Honourable Commons of *Great Britain*, who are now here, would intercede with his Majesty for me.

I take my Leave of your Lordships, and wish you all Happiness.

MY Lords, I am truly sensible of my Crime, Lord Kenner's Answer. and want Words to express my Repentance. God knows I never had any personal Prejudice against his Majesty; nor was I ever accessory to any previous Design against him. I humbly beg my Noble Peers, and the Honourable House of Commons, to intercede with the King for Mercy to me, that I may live to shew myself the dutifullest of his Subjects, and to be the Means to keep my Wife and four small Children from starving; the Thoughts of which, with my Crime, makes me the most unfortunate of all Gentlemen.

I Am very sensible how unfit I am to plead my own Lord Nairn's Answer. Cause before your Grace, (my Lord High-Steward,) and this August Assembly; and, therefore, though I could say much to extenuate the Crime for which I stand impeached, yet I chuse rather to lay my whole Stress upon the King's Mercy; for which he is so renowned, and which I was put in Hopes of at the Time of my Surrender. In Consideration whereof, and in Compassion to an afflicted Wife and Twelve Children, I still hope, by the Mediation of your Grace, my Noble Lords, and the Honourable House of Commons, I may obtain it; solemnly protesting, that in Gratitude for so signal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his most Gracious and Sacred Majesty King *George*.

The Lord High-Steward asked every one of them, if they had any Thing to say in Arrest of Judgment; and each answering, No, Proclamation was made for Silence.

Then his Grace the *Lord High-Steward*, upon proceeding to Judgment against *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn*, made the following Speech unto them.

JAMES Earl of *Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmure, William Lord Nairn* ;

You stand impeached by the Commons of *Great Britain* in Parliament assembled of High Treason, in traitèrously imagining and compassing the Death of his most sacred Majesty, and in conspiring, for that End, to levy a bloody and destructive War against his Majesty, in order to depose and murder him ; and in levying War accordingly, and proclaiming a Pretender to his Crown to be King of these Realms.

Which Impeachment, though one of your Lordships, in the Introduction to his Plea, supposes to be out of the Ordinary and Common Course of Law and Justice, is yet as much a Course of proceeding according to the Common Law, as any other whatsoever.

If you had been indicted, the Indictment must have been remov'd, and brought before the House of Lords, (the Parliament sitting.) In that Case you had ('tis true) been accused only by the Grand Jury of one County ; in the present, the whole Body of the Commons of *Great Britain*, by their Representatives, are your Accusers.

And this Circumstance is very observable, (to exclude all possible Supposition of Hardship, as to the Method of proceeding against you,) that however all great Assemblies amongst us are apt to differ on other Points, you were impeached by the unanimous Opinion of the House of Commons, (not one contradicting.)

They found themselves, it seems, so much concerned in the Preservation of his most truly sacred Majesty, and the Protestant Succession, (the very Life and Soul of these Kingdoms,) that they could not omit the first Opportunity of taking their proper

Part

Part, in order to so signal and necessary an Act of his Majesty's Justice.

And thus the whole Body Politick of this free Kingdom has, in a manner, rose up in its own Defence, for the Punishment of those Crimes which, 'twas rightly apprehended, had a direct Tendency to the everlasting Dissolution of it.

To this Impeachment you have severally pleaded, and acknowledged yourselves Guilty of the High-Treason therein contain'd.

Your Pleas are accompanied with some Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as some of the Circumstances, said to have attended your Surrender, seeming to be offer'd rather as Arguments only for Mercy, than any Thing in Mitigation of your preceding Guilt, is not proper for me to take notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I should take this Occasion to make some Observations to your Lordships upon it; to the End that the Judgment to be given against you may clearly appear to be just and righteous, as well as legal; and that you may not remain under any fatal Error, in respect of a greater Judicature, by reflecting with less Horror and Remorse on the Guilt you have contracted, than it really deserves.

It is alledg'd by some of your Lordships, that you engaged in this Rebellion without previous Concert or Deliberation, and without suitable Preparations of Men, Horses, and Arms.

If this should be supposed true, on some of your Lordships averring it, I desire you to consider, that as it exempts you from the Circumstance of contriving this Treason, so it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it shews, That your Inclinations to rebel were so well known, (which could only be from a continued Series of your Words and Actions,) that the Contrivers of that horrid Design depended upon you, and therein judg'd rightly: That your Zeal to engage in this Treason was so strong, as to carry you into it on the least Warning, and the very first Invitation: That you would not excuse yourselves by

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want of Preparation, as you might have done: And that rather than not have a Share in the Rebellion, you would plunge yourselves into it almost naked, and unprovided for such an Enterprize. In short, that your Men, Horses, and Arms, were not so well prepared as they might, and would have been on longer Warning; but your Minds were.

It is alledg'd also as an Extenuation of your Crime, that no cruel or harsh Action (I suppose is meant no Rapine or Plunder, or worse) has been committed by you.

This may in part only be true: But then your Lordships will at the same Time consider, that the laying waste a Tract of Land bears but a little Proportion in point of Guilt, compared with that Crime of which you stand convicted; an open Attempt to destroy the best of Kings, to ruin the whole Fabrick, and raze the very Foundations of a Government, the best suited of any in the World to perfect the Happiness, and support the Dignity of human Nature. The former Offence causes but a Mischiefe that is soon recover'd, and is usually pretty much confin'd; the latter, had it succeeded, must have brought a lasting and universal Destruction on the whole Kingdom.

Besides, much of this was owing to Accident: Your March was so hasty, partly to avoid the King's Troops, and partly from a vain Hope to stir up Insurrections in all the Counties you passed through, that you had not Time to spread Devastation, without deviating from your main, and, as I have observ'd, much worse Design.

Farther, 'tis very surprizing that any concerned in this Rebellion, should lay their engaging in it on the Governments doing a necessary and usual Act, in like Cases, for its Preservation; the giving Orders to confine such as were most likely to join in that Treason: 'Tis hard to believe that any one should rebel, merely to avoid being restrain'd from rebelling; or that a gentle Confinement would not much better have suited a crazy State of Health, than the Fatigues and Inconveniences of such long and hasty Marches in the Depth of Winter.

Your Lordships rising in Arms, therefore, has much more justify'd the Prudence and Fitness of those Orders, than those Orders will in any wise
serve

serve to mitigate your Treason. Alas! happy had it been for all your Lordships, had you fallen under so indulgent a Restraint!

When your Lordships shall in good Earnest apply your selves to think impartially on your Case, surely you will not your selves believe, that 'tis possible, in the Nature of the Thing, to be engaged, and continue so long engaged, in such a difficult and laborious Enterprize, through Rashness, Surprise, or Inadvertency; or that had the Attack at *Preston* been less sudden, (and consequently the Rebels better prepared to receive it,) your Lordships had been reduced the sooner, and with less, if not without any Bloodshed.

No, my Lords, these, and such like, are artful Colourings, proceeding from Minds fill'd with Expectation of continuing in this World; and not from such as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Causes of Actions, must be laid open.

And now, my Lords, having thus removed some false Colours you have used; to assist you yet farther in that necessary Work of thinking on your great Offence as you ought, I proceed to touch upon several Circumstances that seem greatly to aggravate your Crime, and which will deserve your most serious Consideration.

The divine Virtues ('tis one of your Lordships own Epithets) which all the World, as well as your Lordships, acknowledge to be in his Majesty, and which you now lay claim to, ought certainly to have withheld your Hands from endeavouring to depose, to destroy, to murder that most excellent Prince; so the Impeachment speaks, and so the Law construes your Actions: And this is not only true in the Notion of Law, but almost always so in Deed and Reality. 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves: Had you succeeded, His Majesty's Case would, I fear, have hardly been an Exception to that general Rule, since 'tis highly improbable, that Flight should have saved any of that illustrious and valiant Family.

'Tis

Proceedings against the Earl of

'Tis a farther Aggravation of your Crime, that his Majesty, whom your Lordships would have de-thron'd, affected not the Crown by Force, or by the Arts of Ambition, but succeeded peaceably and legally to it; and on the Disease of her late Majesty, without Issue, became undoubtedly the next in Course of Descent capable of succeeding to the Crown by the Law and Constitution of this Kingdom, as it stood declared some Years before the Crown was expressly limied to the House of *Hanover*. This Right was acknowledg'd, and the Descent of the Crown limited or confirmed accordingly, by the whole Legislature in two successive Reigns; and more than once in the latter; which your Lordships Accomplices are very far from allowing, would bias the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Persons might, with a good Conscience, endeavour to subvert such a Settlement by running to tumultuary Arms, and by intoxicating the Dregs of the People with contradictory Opinions, and groundless Slanders? or that God's Providence would ever prosper such wicked, such ruinous Attempts?

Especially, if, in the next Place, it be consider'd, that the most fertile Inventions on the Side of the Rebellion, have not been able to assign the least Shadow of a Grievance as the Cause of it: To such poor Shifts have they been reduc'd on this Head, that for want of better Colours, it has been objected in a solemn Manner, by your Lordships Associates, to his Majesty's Government, That his People do not enjoy the Fruits of Peace, as our Neighbours have done since the last War. Thus they first rob us of our Peace, and then upbraid us that we have it not. 'Tis a monstrous Rebellion that can find no Fault with the Government it invades, but what is the Effect of the Rebellion itself.

Your Lordships will likewise do well to consider what an additional Burthen your Treason has made necessary on the People of this Kingdom, who wanted, and were about to enjoy some Respite. To this End, 'tis well known, that all New, or Increase of Taxes, were the last Year carefully avoided; and his Majesty was contented to have no
more

more Forces than were just sufficient to attend his Person, and shut the Gates of a few Garrisons. Vol. vi. p. 16.

But what his Majesty thus did for the Ease and Quiet of his People, you most ungratefully turn'd to his Disadvantage, by taking Encouragement from thence, to endanger his and his Kingdoms Safety, and to bring Oppression on your Fellow-Subjects.

Your Lordships observe I avoid expatiating on the Miseries of a Civil War, a very large and copious Subject: I shall but barely suggest to you on that Head, that whatever those Calamities may happen to be in the present Case, all who are, at any Time, or in any Place, Partakers in the Rebellion, (especially Persons of Figure and Distinction,) are in some Degree responsible for 'em: And therefore your Lordships must not hold your selves quite clear from the Guilt of those Barbarities which have been lately committed by such as are engaged in the same Treason with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby exposing many Thousands to Cold and Hunger in this rigorous Season.

I must be so just to such of your Lordships as profess the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treason, which the others had not; in that 'twas evident, Success on your Part must for ever have established Popery in this Kingdom, and that probably you could never have again so fair an Opportunity.

But then, good God! how must those Protestants be covered with Confusion, who enter'd into the same Measures, without so much as capitulating for their Religion, (that ever I could find, from any Examination I have seen or heard,) or so much as requiring, much less obtaining a frail Promise, that it should be preserv'd, or even tolerated.

It is my Duty to exhort your Lordships, thus to think of the Aggravations, as well as the Mitigations (if there be any) of your Offences; and if I could have the least Hopes, that the Prejudices of Habit and Education would not be too strong for the most earnest and charitable Entreaties, I would beg you not to rely any longer on those Directors of your Consciences, by whose Conduct you have very probably been led into this miserable Condition;

Proceedings against the Earl of

tion; but that your Lordships, would be assisted by some of those pious and learned Divines of the Church of *England*, who have constantly bore that infallible Mark of sincere Christians universal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you (and sorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which must be the same that is usually given against the meanest Offender in the like Kind.

The most ignominious and painful Parts of it are usually remitted by the Grace of the Crown to Persons of your Quality; but the Law, in this Case, being deaf to all Distinctions of Persons, requires I should Pronounce, and accordingly it is adjudg'd by this Court,

“ That you *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nitbisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn*, and every of you, return to the Prison of the Tower from whence you came; from thence you must be drawn to the Place of Execution; when you come there, you must be hang'd by the Neck, but not till you be dead; for you must be cut down alive, then your Bowels must be taken out, and burnt before your Faces: Then your Heads must be severed from your Bodies, and your Bodies divided each into four Quarters; and these must be at the King's Disposal.

And God Almighty be merciful to your Souls.

Then the Lord High-Steward stood up uncovered; and, declaring there was nothing more to be done by Virtue of the present Commission, broke the Staff, and pronounced it dissolv'd; and then leaving the Chair, came down to the Wooll-Pack, and said, Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

The condemn'd
Lords Petition'd
the two Houses.

The Writs for executing the said six Lords being on the 18th of *February* deliver'd to the Lieutenant of the *Tower*, and the Sheriffs of *London*, and *Middlesex*, they petitioned both Houses of Parlia-

Parliament, on the 22d of the same Month, to interceed with his Majesty on their Behalf. And the Lords presented an Address accordingly. To which the King only answered: "That on this and all other Occasions, he shou'd do what he thought most consistent with the Dignity of his Crown, and the Safety of his People."

The Commons, to avoid Importunity, adjourn'd themselves; and an Order of Council was issued on the 23d Instant for executing the Earl of *Derwentwater*, the Earl of *Nithisdale*, and the Lord Viscount *Kenmare*. The next Day the other three were reprieved till the 7th of *March*. Three of them ordered to be executed.

The Debates in Council run high on this Occasion. The Earl of *Nottingham*, Lord President of the Council, was soon made sensible of the Resentment of the Court; he and all that were related to him, being turn'd out of their Places. Debates in Council on reprieving some of them.

James Earl of *Derwentwater*, and *William* Viscount *Kenmare*, were brought to the Scaffold on *Tower-Hill* on the said 24th of *February*. The Earl had such Assurances given him of his Life by his Friends, that he was under some Surprise. But the Lord *Kenmare* seemed well prepared for the fatal Stroke: The Composure and Serenity of his Mind, was admir'd by all that saw him. Earl *Derwentwater*, and *Kenmare* executed.

The Lord *Derwentwater* read the following Paper at his Execution.

BEING in a few Minutes to appear before the Tribunal of God, where, tho' most unworthy, I hope to find Mercy, which I have not found from Men now in Power; I have endeavour'd to make my Peace with his divine Majesty, by most humbly begging Pardon for all the Sins of my Life: And I doubt not of a merciful Forgiveness through the Merits of the Passion and Death of my Saviour Jesus Christ; for which End I earnestly desire the Prayers of all good Christians. Vol. vi. p. 17.

After this I am to ask Pardon of those whom I might have scandalized, by pleading Guilty at my Tryal. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading Guilty was but the Consequence of having submitted to Mercy; and many Arguments were used

used to prove there was nothing of Moment in so doing; amongst others, the universal Practice of signing Leases, whereof the Preambles run in the Name of the Person in Possession.

But I am sensible, that in this I have made bold with my Loyalty, having never any other but King *James* the Third for my rightful and lawful Sovereign; him I had an Inclination to serve from my Infancy, and was moved thereto by a natural Love I had to his Person, knowing him to be capable of making his People happy; and though he had been of a different Religion from mine, I should have done for him all that lay in my Power, as my Ancestors have done for his Predecessors, being there-to bound by the Laws of God and Man.

Wherefore, if in this Affair I have acted rashly, it ought not to affect the Innocent: I intended to wrong no Body, but to serve my King and Country, and that without Self-Interest; hoping, by the Example I gave, to have induced others to their Duty; and God, who sees the Secrets of my Heart, knows I speak Truth. Some Means have been proposed to me for saving my Life, which I look'd upon as inconsistent with Honour and Conscience, and therefore I rejected them; for, with God's Assistance, I shall prefer any Death to the doing a base unworthy Action. I only wish now, that the laying down my Life might contribute to the Service of my King and Country, and the Re-establishment of the ancient and fundamental Constitution of these Kingdoms, without which no lasting Peace or true Happiness can attend them: Then I should indeed part with Life even with Pleasure. As it is, I can only pray, that these Blessings may be bestowed upon my dear Country; and since I can do no more, I beseech God to accept of my Life as a small Sacrifice towards it.

I die a Roman Catholick: I am in perfect Charity with all the World; I thank God for it, even with those of the present Government, who are most instrumental in my Death. I freely forgive such as ungenerously reported false Things of me, and I hope to be forgiven the Trespases of my Youth by the Father of infinite Mercy, into whose Hand I commend my Soul.

Ja. Derwentwater
P. S.

P. S. If that Prince, who now governs, had given me my Life, I should have thought my self obliged never more to have taken up Arms against him.

After the Reading this Paper, he deliver'd it to the Sheriff. Then turning to the Block, and finding a rough Place, he bid the Executioner chip it off. Then pulling off his Coat and Westcoat, he lay down to fit his Neck to the Block, telling the Executioner, that the Sign he should give him, was, *Lord Jesu, receive my Soul*; and at the third Time of repeating it, he was to do his Office. Which he accordingly did at one Blow.

Immediately after the Earl was executed, the Lord *Kenmure* was brought to the Scaffold, accompany'd by his Son and some Friends, and attended by two Clergymen of the Church of *England*; which was the Religion he profess'd. He made no other Speech, than that he was concern'd that he had pleaded Guilty. After which laying down his Head on the Block, he rais'd it up again; and still continuing on his Knees, gave the Executioner some Money, and told him he wou'd give him no Sign, but when he laid down his Head again, he might perform his Office as he saw good. Then having lifted up his Hands a short Time in Prayer, he resolutely laid down his Head; which at two Blows was sever'd from his Body.

After his Execution, a Letter was found, which he wrote to the Pretender, (whom he stiled King *James*;) in which he declared, that he died for his faithful Services to his Majesty; but hop'd the Cause he died for would flourish after his Death: And as he suffered for his Service, he hop'd his Majesty wou'd provide for his Wife and Children.

The other Lords, *viz.* Lord *Widdrington*, Earl of *Carnwath*, and Lord *Nairn*, were first reprieved to the 7th of *March*, and afterwards pardon'd: But the Earl of *Nithisdale*, the Day before the Execution of the Lord *Derwentwater*, found Means to make his Escape out of the Tower, disguised in Womens Apparel, and has not been heard of since.

The TRYAL of GEORGE Earl of
Wintoun for High-Treason, on
March 15, 16, 19. 2 Geo. I.
1715.

The Earl im-
peach'd.

THE Earl was impeach'd on *Monday* the 9th of *January*, 1715. and the same Day the Articles against him were read in the House of Lords; and it was ordered that the said Earl, with the other impeach'd Lords, shou'd be brought to the Bar the next Day, to hear the said Articles read.

Allow'd Time to
Answer.

On *Tuesday* the 10th of *January*, the Earl and the other impeach'd Lords being brought to the Bar, and having heard the Articles read, the Lord Chancellor acquainted them that was the proper Time, if they had any Thing to request of the House. Whereupon the Earl of *Wintoun* desired he might have a Copy of the Articles, and Time to answer, and Council assign'd him. Accordingly a Copy was order'd him, and Time to answer till *Saturday* following, and that Council should be assign'd him; and his Lordship desiring that Time might be allow'd him to name his Council, the House allow'd him to name a Solicitor as well as Council, and gave him leave to name whom he desir'd to come to him in the Evening, or next Morning, in order to advise him in the naming of them. He thereupon named Mr. *Heriot* a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *Lesley* a Lawyer; and it was order'd they might repair to the said Earl at any Time, before the sitting of the House the next Day.

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And to name his
Council and So-
licitors.

It was further order'd, that any of the impeach'd Lords might have Copies of any Records or Journals for their Defence, and Summons for their Witnesses, who should have the Protection of the House for their safe coming and going, during the Tryals.

On *Thursday* the 12th of *January* a Petition from the said Earl was presented to the House, praying further Time to name his Council and a Solicitor, Sir *Thomas Powis* and Mr. *Mead* having refus'd to appear for him; whereupon Time was given him until

until Eleven o' Clock the next Day: And upon the Request of the Earl of *Derwentwater*, and the Lord *Widdrington*, it was order'd, That all the impeach'd Lords have Time to put in their Answers till *Monday* next.

On *Monday*, the 16th of *January*, it was order'd, That in regard the Counsel assign'd some of the Lords, refus'd to be concern'd for them, *Thursday* next be appointed peremptorily for them to put in their Answers.

The Lord *Wintoun* being brought to the Bar on *Thursday* the 19th of *January*, and asked if he was ready to put in his Answer, he deliver'd a Petition, A Petition Es
showing further Time; That their Lordships Order for allowing certain Persons to come to him expiring on *Friday* Vol. vi. p. 194 last, he had no Opportunity of naming other Counsel and Solicitors, since those he named formerly had refus'd to be employ'd; and therefore prayed that Sir *Constantine Phipps* and Mr. *Peer Williams* might be assign'd him for Counsel, and *Charles Menzies* and Mr. *James Leslie* for Solicitors; and that Mr. *George Hereot*, a Clergyman, might have Access to him. Whereupon it was order'd, That the Counsel mention'd in the said Petition be assign'd him, and either of the said Solicitors; and that he have Time to put in his Answer till *Monday* next; and that the Clergyman, mention'd in the Petition, may have Access to him, provided he stay in Custody with him during his Confinement. After which the Earl, having named *Menzies* for his Solicitor, withdrew.

The Earl petitioning the House again on *Saturday*, the 21st of *January*, for further Time to put in his Answer, the Petition was rejected.

The Earl being brought to the Bar on *Monday* the 23d of *January*, and still desiring further Time to put in his Answer, was acquainted, That he had been indulg'd more than any other of the impeach'd Lords; and that this being the peremptory Day for putting in his Answer, the House would allow him no further Time; and the Consequence of his refusing to plead in Law was, That Judgment would be awarded against him, as if he had pleaded Guilty. Whereupon he deliver'd in his Answer fairly engrossed in Parchment.

The Tryal of GEORGE Earl of

On *Saturday*, the 28th of *January*, the Commons reply'd to the Earl's Answer; and on *Wednesday*, the 8th of *February*, the Lords appointed *Thursday* the 16th Instant for the Tryal of the said Earl at the Bar of the House in *Westminster-Hall*.

Upon reading the Petition of *George Earl of Wintoun* on *Friday*, the 10th of *February*, desiring, That Regard might be had to the Distance of the Place and Season of the Year, for bringing up of his Witnesses from *Scotland*, and other Parts; and that the House wou'd grant him an Order to compel his Witnesses to come up, and give Evidence at the Tryal on the Behalf of the Petitioner; it was order'd, That the Time for the Tryal of the Petitioner be enlarg'd to *Thursday*, the 8th of *March* next; and that the Witnesses, named by the Petitioner, be required to attend the House at the same Time, except such as were Prisoners for High-Treason; and that they have the Protection of the House for their safe Coming and Going during the Tryal.

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Upon reading a Petition of the said Earl's on *Monday*, the 5th of *March*, shewing, That his Agents had us'd all possible Dilligence in serving the Order of the House for the Attendance of his Witnesses, and that they were all on their Way hither, either by Land or Sea; and that if they were already arriv'd, the Time wou'd be too short to prepare his Briefs and instruct his Counsel; and praying therefore that the Time appointed for the Tryal might be enlarg'd; it was order'd, That the Tryal be on the 15th of this Instant *March*.

Upon reading another Petition of the Earl's on *Monday*, the 12th of *March*, shewing, That Four of his most material Witnesses were not arriv'd, being lame and infirm, and so not able to travel with Expedition; and therefore praying that the Time for his Tryal might be enlarg'd; *Charles Menzies*, the Petitioner's Solicitor, was call'd in, and examin'd upon Oath concerning the Allegations of the said Petitioner; and he failing to make good the same, the Petition was rejected.

On *Wednesday*, the 14th of *March*, another Petition of the Earl's was read, praying that Mr. *Kestebey* and Dr. *Straban* might be added to his Council: It was order'd, That they be assign'd the Petitioner, to be heard as to Matters of Law only.

A Motion also being made, That certain other Persons, whose Names were exhibited in a List on Behalf of the Prisoner, might be summon'd as Witnesses at the Tryal, they were order'd to attend accordingly at *Westminster-Hall* To-morrow at Ten in the Forenoon.

The Earl desiring also that General *Carpenter*, a Member of the Commons, might be examin'd also as a Witness at the Tryal, a Message was sent to the Commons, that they wou'd give the General Leave to be examin'd, it was comply'd with.

It was order'd also, That the Witnesses, produc'd on behalf of the Earl, shou'd be examin'd upon Oath; and that the Oath to be administred on both Sides shou'd be this,

THE Evidence which you shall give at this Tryal, concerning George Earl of Wintown, Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, and the Contents of this Book.

About One o' Clock on *Thursday, March 15th*, The first Day's 1715. the Lords came from their House to the Tryal Court erected in *Westminster-Hall*; when the Lords Vol. vi. p. 21. being placed in their proper Seats, and the Lord High-Steward on the Wool-Pack, the Clerk of the Crown in Chancery made three Reverences to the Lord High-Steward, and presented him with his Commission. After which it was carried to the Table, and read, all the Peers standing up uncover'd while the Commission was reading.

The COMMISSION.

Georgius Rex,

GEORGIUS, Dei Gratia Magnæ Britannia, Franciæ, & Hibernia Rex, fidei Defensor, &c. Prædilecto & fideli Consiliario nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britannia, Salutem, Cum Georgius Comes de Wintown, cum aliis coram Nobis in præsentî Parlamento per Milites, Cives, & Burgenses in Parlamento nostro Assemblat' de alta Proditione per ipsam Georgiam Comitem de Wintown,
P 2 & al'

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Et al' commisit' & perpetravit' in nomine ipsorum Militum Civium & Burgensium. Et nomine omnium Communium Regni nostri Magnæ Britannia impetit' & accensat' existit: Nos considerantes quod Justitia est virtus excellens, & altissimo complacens volensq; quod prædict' Georgius Comes de Wintoun, de & pro Proditione unde ipse ut præfetur impetit' accusat' existit coram Nobis in præsentem Parlamento nostro secundum Leg' & Consuetudin' hujus Regni nostri Magnæ Britannia & secundum Consuetudinem Parliamenti audiat' sententietur & adjudicetur cateraq; omnia quæ in hac parte pertinent debito modo exerceantur & exequantur ac pro eo quod Proceres & Magnates in præsentem Parlamento nostro assenblat' Nobis humilime supplicaverunt ut Senescallum Magnæ Britannia pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspectione & industria vestris plurimum confidentes Ordinavimus & Constituimus vos ex hac causa Senescallum Magnæ Britannia ad Officium illud cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmissa diligenter intendatis & omnia quæ in hac parte ad Officium Senescalli Magnæ Britannia pertinen' & requiruntur, hac vice facitis, exerceatis & exequamini cum effectu. In cujus rei Testimonium has Literas, nostras fieri fecimus Patentes, Teste me ipso apud Westm' decimo-quinto die Martii Anno Regni nostri Secundo.

Per ipsum Regem propria Manu Signat'

WRIGHT.

Then the Herald, and Gentleman Usher of the Black Rod, after three Reverences kneeling, presented the White Staff to his Grace; who being attended by the Herald, Black Rod, and Seal-Bearer, (making his proper Reverences towards the Throne,) remov'd from the Wool-Pack to an Armed-Chair, placed on the uppermost Step but one of the Throne; after which, a Proclamation was made for Silence, and another for the Lieutenant of the *Tower* to bring his Prisoner to the Bar.

Then the Earl was brought to the Bar by the Deputy-Lieutenant of the *Tower*, the Ax being carry'd before him, with the Edge turn'd from him: The Prisoner

Prisoner, after kneeling, bow'd to the Lord High Steward, and to the House of Peers; which Compliment being return'd him, and another Proclamation made for Silence, the Lord High Steward spake to the Prisoner to this Effect.

“ **T**HAT nothing cou'd be a greater Support to his Lord High Stew.
Mind, (if not conscious of Guilt,) than to con- ard's Speech,

“ sider that he was to be Try'd by the whole Body Vol. vi. p. 22.
of Peers in Parliament assembled; from whence

“ he might be assur'd, that Justice wou'd be admin-

“ ister'd to him, not only with that common De-

“ gree of Compassion which Humanity itself deriv'd

“ to People in his Condition, but with that extraordinary

“ Concern for him, which naturally

“ flow'd from a Party of Circumstances common

“ to himself and his Judges, (the Charge against

“ him excepted.)

“ But he must not hope, if he was clearly prov'd

“ Guilty, that their Lordships, who were under

“ the strongest Obligations to do Right that cou'd

“ be laid on noble Minds, namely, their Honour,

“ wou'd not break through all the Difficulties that

“ unmerited Pity might put in their Way to do Justice

“ upon him.

“ That as his Lordship wou'd not be interrupted

“ in his Defence, he must attend with Patience till

“ the Managers for the Commons had produc'd their

“ Evidence against him; but when a Witness had

“ been examin'd by the Commons, his Lordship

“ should cross-examine him before another should

“ be call'd.

“ That his Council were not to cross-examine

“ the Witnesses, or give him any Assistance publick

“ or private, while Matter of Fact only was in

“ question; but if Matter of Law arose, they might

“ speak to it, and were permitted to be within hearing

“ for that End.

“ That his Lordship was the first, who, on an

“ Impeachment of High-Treason, wou'd have the

“ Benefit of the Law made in the first Year of the

“ late Queen *Anne*, for the examining the Witnesses

“ for the Prisoner upon Oath; whereby his Wit-

“ nesses wou'd be intitled to the same Degree of

“ Credit as the Witnesses produc'd against him.

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“ That his Lordship, if he desir’d it, might have
 “ Pen, Ink, and Paper, to take Notes for his De-
 “ fence, and if he omitted any Thing that was ma-
 “ terial for his Defence, his Grace wou’d put him
 “ in Mind of it. And that when he had occasion
 “ to speak, he was to address himself to the Lords
 “ in general, and not to any particular Lord.”

After which the Lord High Steward command-
 ed the Articles of Impeachment, the Earl’s Answer,
 and the Replication of the Commons to the said
 Answer, to be read; and they were read according-
 ly, and are as follows ;

The Articles of
 Impeachment.

THE Articles set forth, That whereas for many
 Years past a wicked Design had been carried on
 to subvert the Government, and extirpate the Pro-
 testant Religion, and to introduce Popery and Ar-
 bitrary Power, in which great Numbers of Persons
 had been concerned, and many Protestants, pre-
 tending Zeal for the Church of *England*, had join’d
 with profess’d Papists, to accomplish the said Trai-
 terous Design.

And whereas God was pleased to crown the un-
 wearied Endeavours of King *William* the Third, in
 procuring the Settlement of the Crown in the House
 of *Hanover*, being the only Means to preserve our
 Religion, Laws, and Liberties, and to secure the
 Protestant Interest in *Europe*; since which Establish-
 ment the Conspirators had endeavour’d to destroy
 the same, to make way for an Impostor and Popish
 Pretender to these Crowns.

And to accomplish these Ends, especially in the
 last Years of Queen *Anne*, all Endeavours were
 us’d by the said Conspirators to prejudice the Minds
 of the Subjects against the said Settlement, the Holy
 Scriptures and the Doctrines of the Church were
 wrested and perverted by Men in Holy Orders, to
 condemn the Revolution, and thereby undermine
 the said Settlement; and those wicked Instruments
 countenanc’d by Marks of publick Favour; false
 Notions of Hereditary Right were propagated by
 Persons in the highest Posts; Jesuitical Distinctions
 invented to enervate the force of the Oaths; and the
 better to conceal their Designs, great Numbers of
 the Conspirators of all Ranks took the said Oaths;
 while

while groundless Fears of the danger of the Church Vol. vi. p. 23,
were fomented to disorder the Minds of well-dis-
pos'd Protestants.

And whereas the Dissolution of the late Confede-
racy against *France*, and the Loss of the Ballance of
Power in *Europe*, were necessary to compleat the
Designs of the Conspirators; and these being effect-
ed by the late ignominious Peace with *France*, the
French King rendered formidable, and the Pro-
testant Succession thereby brought into Danger.

At which Time, and in such deplorable Circum-
stances, it pleas'd God to take off the late Queen
Anne, and by many wonderful Providences to bring
his Majesty quietly to the Throne of his Ancestors,
to which he was receiv'd with one full Voice and
Consent of every good Subject as their only Leige
Lord: And altho' his Majesty's Reign had been
one Series of Wisdom, Justice, and Clemency, and
he had with unwearied Labours endeavour'd to re-
trieve the Honour of the Nation, and re-establish
Trade; and altho' he had given all Encouragement
to the Church of *England*, and tenderly us'd his Po-
pish Subjects, nevertheless the said Conspirators had
renew'd their Endeavours to throw these Kingdoms
into Confusion, by repeating the abovesaid wicked
Practices, and fomenting groundless Jealousies of
his Majesty's Administration, incited Riots and Tu-
mults against his Majesty's peaceable Protestant Sub-
jects, under pretence of Zeal for the Church, there-
by seducing the People from their Allegiance and
preparing them for an open Rebellion.

The said Conspirators, to deprive the Nation of
the Blessings they now enjoy under his Majesty,
did contrive and resolve to put their said Traiterous
Designs in Execution; for which Purpose, *George*
Earl of *Wintoun*, and divers others, as false Tray-
tors to his Majesty King *GEORGE*, having with-
drawn their Allegiance which they ow'd to him,
did in or about the Months of *September*, *October*,
or *November*, 1715. maliciously, falsely, and trai-
terously imagine and compass the Death of his said
Majesty.

And to accomplish their said Treasons, the said
George Earl of *Wintoun* did, in or about the said
Months, or some of them, and at divers other
Times, and in divers Places in this Kingdom, trai-
terously,

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terously conspire and resolve, with other evil dispos'd Persons, to levy War within the Counties of *Teviotdale, Northumberland, Cumberland, and the County-Palatine of Lancaster*, and elsewhere, within this Kingdom, in order to depose and murder his said Majesty, and deprive him of his Royal State, Crown, and Dignity,

And that the said Earl and his Confederates, at the Times and Places aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and did assemble with them in a traiterous and warlike Manner, in order to raise Tumults and Rebellions within this Kingdom; and having procur'd great Quantities of Arms, Ammunition, and warlike Instruments, did form or compose, or assist in the forming and composing an Army of his Majesty's Subjects, in order to wage War against his Majesty in behalf of the Pretender; and at the said Times and Places did maliciously and traiterously levy War and Rebellion against his Majesty; and in a hostile Manner did march through and invade several Parts of this Kingdom, and seize the Horses and Goods of his Majesty's peaceable Subjects, taking from them Guns, and other warlike Instruments, for carrying on their traiterous Purposes.

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That the said Conspirators, during their March and Invasion aforesaid, did traiterously cause the said Pretender to be proclaimed as King of these Realms; and did take and seize from the Officers of the Revenue the publick Money for his Use; and did procure several Men in Holy Orders, Ministers of the Church of *England*, who had abjur'd the said Pretender, to accompany and countenance the said traiterous Enterprize, and to pray for the said Pretender in publick Churches.

That the said Conspirators, on or about the 9th, 10th, 11th, 12th, or 13th Day of *November*, aforesaid, did traiterously seize and possess themselves of the Town of *Preston* in the County-Palatine of *Lancaster*, and there in a hostile Manner levy War, and engage his Majesty's Forces, causing a horrid Slaughter and Murder of many of his Majesty's Subjects.

All which Treasons and Crimes were contriv'd and perpetrated against the King, his Crown and
Dignity,

Dignity, and contrary to their Duty and Allegiance and the Laws and Statutes of the Realm; of all which Treasons, the said Knights, Citizens, and Burgeffes in Parliament assembled, do, in the Name of themselves, and all the Commons of *Great Britain*, impeach the said Earl; and pray he may be put to answer all and every the Premises; and that such Proceedings, Examinations, Tryals, and Judgments, may be had thereupon, as shall be agreeable to Law and Justice.

The Answer of the Earl of *Wintoun*, to these Articles, was to this Effect:

THAT though it might be presum'd, from his The Earl's Answer. being taken with those who were in Arms swer. against the Government, he was equally guilty with them; yet when it should appear, That the Circumstances of his Case was different from theirs, he did not doubt but their Lordships would distinguish him in Judgment. He observes, That he was descended from a noble Family, never polluted with Treason; and that he never degenerated from his Ancestors so far as to form a Design against the Constitution: That he was so cautious of giving Offence to the Government, that on his Return from his Travels he confined himself to his House, keeping no Correspondence by Letters with any Person whatsoever; and yet he could not be quiet or safe there. The Officers of the Militia several Times forcibly entered his Dwelling-House by Night, and rifled it; broke into his Chappel, and defaced the Monuments of his Ancestors, abusing their dead Bodies in the Tombes: That both the Dragoons and Militia had kept guard in his House, and Cannon were brought to demolish it: Whereupon he was forced to seek for Shelter among his Tenants Vol. vi. page 25. and Neighbours; and was at last unfortunately driven into the Company of some of the Gentlemen impeached with him: But affirms he joined them only with an Intention to preserve himself, and not with any traiterous Design: That he was not admitted into their Secrets, nor had any Thoughts of leaving his Country, or of marching into *England*; and did not discover his being there till it was too late for him to return to *Scotland* alone, without the ut-
most

most Hazard : That although he was constrained to keep the other Lords and Gentlemen Company, he never joined with them in any Act of Hostility or Violence, or countenanced them therein : That he did not so much as fire a Pistol at *Preston*, or elsewhere, but surrendered himself to General *Wills*, with the rest ; and conscious of his own Innocence, answers to the Impeachment, *That he was not Guilty*. And for his Tryal, puts himself on their Lordships, begging they would believe his Answer proceeded from the Sense he had of the Truth of it, and not from any Obstinacy, or Intention to give any unnecessary Trouble, or any Doubt he had of his Majesty's Clemency ; but if it should appear that he had committed any Act, which in the Rigour of the Law might be construed High-Treason, he hoped the Innocence of his Heart, and Ignorance of the Law, through their Lordship's Intercession, would render him an Object of his Majesty's Mercy ; which they were encouraged to depend upon when they surrendered, and submitted himself to their Lordships Wisdom and Judgment.

To the Answer of *George Earl of Wintoun*, the Commons reply'd,

“ **T**HAT they did aver their Charge against the said Earl for High-Treason to be true ; and that the said Earl was guilty of High-Treason in the Manner he stood impeach'd ; which they were ready to prove.”

The Articles, Answer, and Reply, having been read, the Lord High-Steward desir'd Leave of the Lords to remove from his Seat to the Table, the Distance from the Bar being so great ; which their Lordships complying with, the Lord High-Steward then directed the Commons to proceed. Whereupon Mr. *Hampden*, one of the Managers, opened the Articles, Answer, and Evidence. He said,

Mr. *Hampden*
opens the Ar-
ticles.

“ **T**HAT they appeared there in the Behalf
“ of the Commons of *Great Britain*, to
“ make good the Impeachment of High-Treason
“ against the Prisoner : That the Commons being
“ justly alarmed with the Dangers the Nation had
“ been

“ been exposed to by the late unnatural Rebellion, Vol. vi. p. 26.

“ thought it incumbent on them to enquire into the
 “ Authors and Promoters of so pernicious an At-
 “ tempt, to deprive these Nations of the invaluable
 “ Blessings they enjoyed under the wise and gentle
 “ Reign of his Majesty, contrived and carried on
 “ with an Intent to depose and murder him, and set
 “ up a popish Pretender, and consequently to change
 “ the Constitution, and introduce a slavish arbitrary
 “ Government : That the Earl of *Wintoun* appear-
 “ ing to have been deeply engaged in the late Re-
 “ bellion, they had brought this Offender to their
 “ Lordships Bar, and exhibited Articles of Impeach-
 “ ment against him. [*Here he repeated the Sub-
 stance of the foregoing Articles, and of his Lordship's
 Answer ; adding,*] That notwithstanding what
 “ was mentioned in the Earl's Plea, and the specious
 “ Explanation he had given to such Proceedings of
 “ his, as were a Foundation to the Commons to in-
 “ clude him with the other Lords, they made no
 “ doubt of shewing the Fallacy and Insufficiency
 “ of his Plea, and make it appear, that there was no
 “ less contained in their Accusation of his Lordship,
 “ than what the Law, the Light of Nature, and the
 “ Rules of Society disapproved and condemned.

“ That the Commons, vigilant for the Safety of
 “ his Majesty, and the Liberties of the People, could
 “ not answer it to God or their Country, if they
 “ neglected to exert themselves in bringing to exem-
 “ plary Justice the declared Instruments of this Re-
 “ bellion : And it was their Satisfaction, that what-
 “ ever Misrepresentations other Prosecutions might
 “ have been formerly liable to, the Notority of this
 “ Rebellion was so evident, that the most malicious
 “ of their Enemies had not the Confidence to deny
 “ it.

“ They were not surpriz'd to find *Papists* engaged Vol. vi. p. 27.

“ in this Rebellion, since they maintained it to be
 “ lawful to kill an heretical Prince, (as they esteem-
 “ ed his Majesty,) declaring that such a Piece of
 “ Service was not only lawful, but pious and agree-
 “ able to God : But how Protestants could be insin-
 “ uated to such a Degree, as to believe that the most
 “ effectual Way to serve the Church, was to bring
 “ in a Popish Prince to rescue it from the Protestant
 “ Succession ; and how it could enter into their
 “ Hearts

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"Hearts to act in Conjunction with the avow'd
 "Enemies of their Religion and Liberties, was not
 "to be accounted for.

"No less was to be the Sacrifice than his Majes-
 "ty, and the Royal Family, a Succession of Princes
 "appointed by divine Providence to be the Guar-
 "dians of the Protestant Interest in *Europe*, and
 "their present happy Constitution, to appease the
 "Fury of Papists, and Protestants associated with
 "them in this Rebellion.

"Had the Rebellion taken place, this Nation, the
 "Glory of the Reformation, the most substantial
 "Bulwark against Popery, had fallen a Victim to
 "Bigotry, Superstition, and Slavery, the pernicious
 "and necessary Consequences of introducing a Re-
 "ligion void of natural Sense, and natural Con-
 "science: That if an Attempt to subvert the Go-
 "vernment, to destroy the King, and set up a *Popish*
 "Pretender; if marching in a Hostile Manner, and
 "carrying on a destructive War in the Bowels of
 "the Nation, were only Acts of Surprize and In-
 "advertency, any Rebellion might be palliated and
 "excused, since scarce any Circumstances could
 "be added in Aggravation of that which had been
 "lately raised in this Kindom."

Sir Joseph Jekyll. Sir *Joseph Jekyll*, another of the Managers, also
 was assign'd to open the Charge contain'd in the
 Articles, the Answer, and the Evidence. He ob-
 served,

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"THAT the Overt-Acts of the Treason con-
 "tain'd in the Articles, might be reduced to these
 "Heads: 1. A Conspiracy of the Earl of *Winton*
 "and his Accomplices to levy War, with an In-
 "tent to depose the King; and that such a Conspi-
 "racy had been held a sufficient Overt-Act of com-
 "passing and imagining the Death of the King.
 "2. His Lordship joining with his Accomplices in
 "proclaiming the Pretender; which was endea-
 "vouring to set another Prince upon the Throne.
 "And, 3. The levying War against the King with
 "an Intent to depose him; which might serve for
 "an Overt-Act of the other Species, of compas-
 "sing and imagining the King's Death: For though
 "it was reckoned, in the Statute of 25 *Edw. III.*

“ as a distinct Treason, yet it did not thereby cease
 “ to be of the Nature of an Overt-Act, of compass-
 “ sing and imagining the King’s Death, which it
 “ was, antecedent to its being declared a distinct Spe-
 “ cies ; and this Point was supported by Authori-
 “ ties, and many Attainders had been upon it.

“ As to his Lordship’s Plea, That he was unfor-
 “ tunately driven into the Company of the Gentle-
 “ men named in the Impeachment, and that he on-
 “ ly joined them with an Intention to preserve him-
 “ self ; his Case was not at all like that in my Lord
 “ Chief Justice *Coke’s First Institutes, Fol. 10.* on
 “ an Impeachment for High Treason, where several
 “ Persons had join’d Sir *John Oldcastle*, then in open
 “ Rebellion, *pro timore mortis, & quam cito potue-
 “ rant recesserunt* ; and who were thereupon acquit-
 “ ted : For here my Lord did not pretend that any
 “ Force was put upon him when he went and join-
 “ ed the Rebels. His Lordship’s Defence, therefore,
 “ was a weak and doubtful one. It was far from
 “ the Commons, however, to desire to convict his
 “ Lordship by any Infirmary in his Defence, or by
 “ any other Means, but by the Strength and Clear-
 “ nefs of the Evidence they should produce.

“ That he could not but take notice, if this hea-
 “ vy Accusation was proved against the Lord at the
 “ Bar, it was a strange Notion of Loyalty, so much
 “ boasted of in his Answer, which he had been plea-
 “ sed to entertain.

“ That Loyalty was a faithful and dutiful Obe- Vol. vi. p. 29.
 “ dience to the King, under the Sanction and Direc-
 “ tion of the Law ; and whoever casts the Law out
 “ of the Idea of Loyalty, they loosened the Bands
 “ of Allegiance : For it was the Law that bound
 “ upon the Conscience of the Subject the Faith and
 “ Allegiance he ow’d to his Sovereign, as it did up-
 “ on the Conscience of the Sovereign that Justice
 “ and Protection he afforded his Subjects.”

Mr. *Attorney-General*, another of the Managers, *Sir Edward Nor-*
 being appointed also to open the Charge and the Evi- *they, Attorney-*
 dence, said, *General.*

“ **T**HAT the Earl was charged with two Spe-
 “ cies of Treason mentioned in the Statute of
 “ 25 *Edw. III.* 1. The compassing and imagining
 “ the Death of the King ; and, 2. The levying War
 “ against

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“ against the King within his Realm. That the Evidence that would be a Proof of the latter Treason, would also prove the former: For levying War to depose the King, was an Overt-Act of conspiring the Death of the King. And he could not but observe on the Preamble to the Earl’s Plea, that it directly contradicted his Plea of *Not Guilty*; and that if what he alledged was taken as true, he therein owned himself guilty, though from thence he concluded, *That he was not Guilty.*

“ That in *September* last, the Earl of *Marr*, in *Perthshire*, and in the Beginning of *October*, *Mr. Forster*, with some of the attainted Lords in *Northumberland*, with great Numbers of armed Men, rais’d a Rebellion in favour of the Pretender, proclaim’d him King, and set up his Standard: That about the 7th or 8th of *October* last, the Earl of *Winton* left his Seat at *Seaton*, in the County of *Lothian*, armed with a Broad-Sword and Pistols, and carried with him Fourteen or Fifteen of his Servants, well mounted, and so arm’d; and about the 10th of *October* join’d the Earl of *Carmarthen* and the Lord Viscount *Kenmare* at *Moffet*, in the County of *Annandale*; and there they formed a little Army, which was commanded by the Lord *Kenmare*, till they join’d *Forster*: That the Lord *Winton* form’d a Troop with his own Servants and others, and it was call’d his Troop; and from that Time commanded a Squadron, till he and the rest surrender’d at *Preston*: That about the 20th of *October* they join’d *Forster* and his Rebels at *Wooler*, &c.

[*The rest of the Evidence will be found at large, in the following Depositions of the Witnesses.*]

Mr. *Attorney* concluded with observing, “ That the Earl had alledged in the Preamble of his Plea, that he never shot off a Pistol: But that was not material; for assembling and marching in a hostile Manner for a publick Purpose, and opposing the King’s Forces, was levying War, altho’ the Lord accus’d never shot off a Pistol.”

[*Then the Managers proceeded to call their Witnesses; and, first, Mr. William Calderwood, Quartermaster to the Rebels, was sworn.*]

Sir Jo. Jekyll. Give an account what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it. Calderwood's Evidence.

Calderwood. Upon the 11th of *October*, 1715. I Vol. vi. p. 31. went with about 70 Horse to join the Lord *Carnwath*, Lord *Wintoun*, Lord *Kenmure*, at *Moffet*, where they had assembled about an hundred and fifty Men.

Att. Gen. About what Time did the Prisoner at the Bar come in?

Calderwood. Towards the Evening of the 11th of *October*; and brought with him about fourteen Men, most part of them arm'd with Sword and Pistol.

Sir Jo. Jekyll. When the Lord at the Bar join'd the Rebels, what did they do?

Calderwood. They went to *Lockmaben*; where the Pretender was proclaimed the next Day, the Lord at the Bar assisting at the Proclamation, with his Sword drawn on Horse-Back.

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchtermuchty*: From thence to *Langholm*; and afterwards to *Hawick*, where the Pretender was proclaim'd, the Lord *Wintoun* being present at the Proclamation.

Sir Jo. Jekyll. Whence did you go from thence?

Calderwood. To *Fedburg*, where the Pretender was proclaim'd; the Earl of *Wintoun*, *Carnwath*, and all the Lords being present.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry*; where we were join'd by General *Forster*.

Att. Gen. How long did you stay there?

Calderwood. Two Nights: And thence we marched to *Wooler*; and from thence to *Kelfoe*, where we were join'd by the *Highland Foot*, commanded by Brigadier *Mackintosh*.

Sir Jo. Jekyll. Whither did you go from *Kelfoe*?

Calderwood. Back again to *Fedburg*; and from thence to *Hawick*, and to *Langholm*.

Att. Gen. What happened at *Langholm*?

Calderwood. Five or six hundred of the *Highland Foot* went from us.

Att. Gen. Did the noble Lord at the Bar attempt to go off with them?

Calderwood. No. At *Fedburg* the Earl of *Wintoun* went up to them, to make them come back: They

They wou'd have no Body come to them but the Prisoner.

Att. Gen. Did he declare any Thing after his Return about their going off.

Calderwood. I heard him say at *Langtown*, it was not his Fault they were gone off.

Att. Gen. Might not my Lord *Wintoun* have gone off with them, if he wou'd?

Calderwood. Yes, he might.

Att. Gen. Whether did you go from *Langtown*?

Calderwood. To *Brampton*, to *Penrith*, to *Appleby*, to *Kendall*, and to *Kirby Lonsdale*.

Att. Gen. What happened there?

Calderwood. The Pretender was proclaim'd at the two last Places, the Earl of *Wintoun* present.

Sir Jo. Jekyll. Whither did you go from thence?

Calderwood. To *Lancaster*, where the Pretender was proclaim'd, the Earl of *Wintoun*, *Kenmure*, *Carmwath*, and *Nithisdale*, being present.

Sir Jo. Jekyll. How did they enter the Town of *Lancaster*?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms or Guns seized there?

Calderwood. Yes; six great Guns, which they took from a Ship: They carried them to *Preston*, and mounted them there.

Mr. Cooper. Was you at Church at *Lancaster*? and who was prayed for there?

Calderwood. The Pretender was prayed for in the Parish Church of *Lancaster*.

Mr. Cooper. Whither did you go from *Lancaster*?

Calderwood. After we had staid two Nights at *Lancaster*, we went to *Preston*; where we arriv'd the Ninth and Tenth Day of *November*.

Mr. Cooper. Did the Horse and Foot arrive the same Day?

Calderwood. The Horse came in on a *Wednesday*, the Foot on *Thursday*.

Att. Gen. Had you any Distinction between the *Scotch* and *English* by Cockades?

Calderwood. Yes; the *Scotch* had Blue and White; and the *English* Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade?

Calderwood.

Calderwood. The Earl of *Wintoun* had a Cockade at *Hawick*; and took several of them from my Hands, and gave them away as he saw fit.

Sir Jo. Fekyll. You saw the Earl of *Wintoun* at *Preston*, when the King's Forces came thither: Do you remember what passed afterwards?

Calderwood. I saw him: He had Sword and Pistols; he was a-foot in the Church-Yard, where there were both Horse and Foot drawn up.

Sir Jo. Fekyll. While my Lord was in Company, and in this March, was there any Troops form'd?

Calderwood. Yes; my Lord *Wintoun* had the first, consisting partly of Gentlemen, and partly of his own Servants.

Sir Jo. Fekyll. By whom were they paid?

Calderwood. By my Lord *Wintoun*: He paid them two Shillings a Day.

Sir Jo. Fekyll. In what Manner was the Troop accounted?

Calderwood. Very well, with Swords and Pistols: He had five Servants in Liveries; the rest were domestic Gentlemen.

Att. Gen. Did my Lord command only that, or Vol. vi. p. 33.
any other Body?

Calderwood. He commanded a Squadron.

Sir Jo. Fekyll. Did my Lord discover any Uneasiness in the March, or seek any Opportunity of leaving them?

Calderwood. Never, that I know of.

Sir Jo. Fekyll. I think you quarter'd him: Did he complain of his Quarters at any Time?

Calderwood. He order'd me to give him good Quarters; which I did.

Att. Gen. What happened at *Preston*? when did the King's Forces come thither?

Calderwood. We came on *Wednesday*; they came on *Saturday*: We defended the Town two Nights, and surrendred on *Monday*.

Att. Gen. Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes; and we defended it.

Sir Jo. Fekyll. How was it defended?

Calderwood. We barricaded every Street: And had two Cannon in each Street.

Att. Gen. What Share did my Lord *Wintoun* bear in the Defence of it?

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Q

Calderwood.

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Calderwood. I saw him go towards the Church-Yard, where there was a Body of Men.

Sir Jo. Fekyll. When my Lord join'd them, and in their March, was there any Money rais'd?

Calderwood. They rais'd a Tax, as they call'd it, a Cess.

Sir Jo. Fekyll. We have done with this Witness. If my Lord will ask him any Questions, he may.

L. Winton. I cannot examine him; I desire my Council may examine him.

L. H. Steward. Your Counsel are not to assist your Lordship in cross-examining the Witnesses: You may examine them your self, by proposing your Questions, and they will be ask'd by the Court.

L. Wintoun. I never examin'd a Witness in my Life: I desire my Council may do it for me.

L. H. Steward. Have you any Question you desire to be ask'd, and it shall be asked?

L. Wintoun. I desire my Council may ask for me. It is hard to have none to speak for me; and there are twenty against me.

[Proclamation made for Silence as usual.]

Sir Jo. Fekyll. My Lords, if the Lord at the Bar doth not think fit to ask this Witness any Question, nor your Lordships, we must call another.

L. H. Steward. Did the Earl join in causing the Pretender to be proclaim'd? or did he seem to dislike it?

Calderwood. No, my Lord; he was always among the rest.

[James Lindsey was sworn.]

Lindsey's Evidence.

Att. Gen. We desire he may give your Lordships an Account, whether he was at *Moffet* when the Pretender was proclaim'd; and what Share my Lord *Wintoun* had in it.

Lindsey. I saw the Lord *Wintoun* first at *Moffet*; the second Time I saw him at *Fedburg*; the third Time at *Kendall*; and the last at *Preston*.

Sir Jo. Fekyll. What happened at any of these Places?

Lindsey. The first Time I saw him, he was riding on a grey Horse, mounted with Sword and Pistol;

Pistol; the second Time sitting with the Guard; and at *Kendall*, when he was coming out of Town, I saw him riding on Horse-back; and at *Preston*, I saw him riding in the Market-Place with other Gentlemen.

Sir Jo. Fekyll. Was there any Proclamation made at any of these Places?

Lindsey. Yes; at *Fedburg*, they told me, they proclaim'd the Pretender. I heard the Voice, but not the Words pronounc'd.

Sir Jo. Fekyll. Was the Prisoner at the Bar there?

Lindsey. I did not see him.

Sir Jo. Fekyll. In what Manner did you march?

Lindsey. In Squadrons.

Att. Gen. Did the noble Lord at the Bar command a Squadron?

Lindsey. I did not know what his Command was: He rode at the Head of the first Squadron.

Sir Jo. Fekyll. Do you know any Thing of raising Money?

Lindsey. I heard talk of it only.

Sir Jo. Fekyll. Do you remember any one Troop?

Lindsey. Yes; there was *Lockhart's*; and one went by the Name of the Lord *Wintoun's*.

Att. Gen. Who was in that Troop of *Lockhart's*?

Lindsey. Some private Men and Servants. The Captain, Mr *Lockhart*, had two or three Servants there.

Att. Gen. Did you know the Troop called the Lord *Wintoun's*? and was there any Servants in it?

Lindsey. There were Servants in it, armed with Sword and Pistol.

Sir Jo. Fekyll. How did the Prisoner behave himself at *Preston*?

Lindsey. I cannot tell.

Sir Jo. Fekyll. We have done with this Witness.

L. H. Steward. My Lord *Wintoun*, if you wou'd ask this Witness any Question, propose it?

[After a considerable Pause. — Elias Cameron was sworn.]

Mr. Cooper. My Lords, we desire he may be asked if he was in the Rebels Army. *Cameron's Evidence.*

Cameron. Yes; I was there, under the Command of Captain *Macklean*, in my Lord *Charles Murray's* Regiment.

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terously conspire and resolve, with other evil dispos'd Persons, to levy War within the Counties of *Teviotdale, Northumberland, Cumberland,* and the County-Palatine of *Lancaster*, and elsewhere, within this Kingdom, in order to depose and murder his said Majesty, and deprive him of his Royal State, Crown, and Dignity,

And that the said Earl and his Confederates, at the Times and Places aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and did assemble with them in a traiterous and warlike Manner, in order to raise Tumults and Rebellions within this Kingdom; and having procur'd great Quantities of Arms, Ammunition, and warlike Instruments, did form or compose, or assist in the forming and composing an Army of his Majesty's Subjects, in order to wage War against his Majesty in behalf of the Pretender; and at the said Times and Places did maliciously and traiterously levy War and Rebellion against his Majesty; and in a hostile Manner did march through and invade several Parts of this Kingdom, and seize the Horses and Goods of his Majesty's peaceable Subjects, taking from them Guns, and other warlike Instruments, for carrying on their traiterous Purposes.

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That the said Conspirators, during their March and Invasion aforesaid, did traiterously cause the said Pretender to be proclaimed as King of these Realms; and did take and seize from the Officers of the Revenue the publick Money for his Use; and did procure several Men in Holy Orders, Ministers of the Church of *England*, who had abjur'd the said Pretender, to accompany and countenance the said traiterous Enterprize, and to pray for the said Pretender in publick Churches.

That the said Conspirators, on or about the 9th, 10th, 11th, 12th, or 13th Day of *November*, aforesaid, did traiterously seize and possess themselves of the Town of *Preston* in the County-Palatine of *Lancaster*, and there in a hostile Manner levy War, and engage his Majesty's Forces, causing a horrid Slaughter and Murder of many of his Majesty's Subjects.

All which Treasons and Crimes were contriv'd and perpetrated against the King, his Crown and
Dignity,

Dignity, and contrary to their Duty and Allegiance and the Laws and Statutes of the Realm; of all which Treasons, the said Knights, Citizens, and Burgessees in Parliament assembled, do, in the Name of themselves, and all the Commons of *Great Britain*, impeach the said Earl; and pray he may be put to answer all and every the Premises; and that such Proceedings, Examinations, Tryals, and Judgments, may be had thereupon, as shall be agreeable to Law and Justice.

The Answer of the Earl of *Wintoun*, to these Articles, was to this Effect:

THAT though it might be presum'd, from his The Earl's Answer. being taken with those who were in Arms swor. against the Government, he was equally guilty with them; yet when it should appear, That the Circumstances of his Case was different from theirs, he did not doubt but their Lordships would distinguish him in Judgment. He observes, That he was descended from a noble Family, never polluted with Treason; and that he never degenerated from his Ancestors so far as to form a Design against the Constitution: That he was so cautious of giving Offence to the Government, that on his Return from his Travels he confined himself to his House, keeping no Correspondence by Letters with any Person wharsoever; and yet he could not be quiet or safe there. The Officers of the Militia several Times forcibly entered his Dwelling-House by Night, and rifled it; broke into his Chappel, and defaced the Monuments of his Ancestors, abusing their dead Bodies in the Tombes: That both the Dragoons and *Militia* had kept guard in his House, and Cannon were brought to demolish it: Whereupon he was forced to seek for Shelter among his Tenants Vol. vi. page 25. and Neighbours; and was at last unfortunately driven into the Company of some of the Gentlemen impeached with him: But affirms he joined them only with an Intention to preserve himself, and not with any traiterous Design: That he was not admitted into their Secrets, nor had any Thoughts of leaving his Country, or of marching into *England*; and did not discover his being there till it was too late for him to return to *Scotland* alone, without the ut-
most

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Lord *Wintoun* was present at the Proclamation of the Pretender there. From *Kelfoe* we went to *Jedburg*; where we were alarm'd by a Party they took for the King's Forces; but it happen'd to be some of their own Party.

Sir *W. Thompson*. What happened on that Occasion?

Patten. I saw the Lords, and among the rest, my Lord *Wintoun* at the Head of some Horse.

Sir *W. Thompson*. With what Intent.

Patten. They apprehended General *Carpenter*, with the King's Forces, was come to attack them.

Sir *W. Thompson*. What happened afterwards?

Patten. They return'd to *Jedburg*; where they staid all Day: And the next Day they march'd to *Hawick*, where they were alarm'd again at Midnight with a Party; and I saw my Lord *Wintoun* in the Street: He had his Sword by his Side. From thence we went to *Langholm*; where we consulted whether to march for *England*, or *Scotland*. A party of Horse went for *Dumfrize*. The *Highlanders*, great Part of them went off there, and wou'd not march for *England*.

Sir *W. Thompson*. Was my Lord *Wintoun* with them at their going off?

Patten. I saw my Lord *Wintoun* go off, and come up again.

Sir *W. Thompson*. If my Lord had had any Inclination to it, might not he have gone off then?

Patten. Any Body might have gone off: There was no Restraint upon him. From *Langholm* we marched to *Langtown*, then to *Brampton*, and so to *Penrith*.

Sir *W. Thompson*. What happened there?

Patten. There was the *Posse Comitatus*: Whether they were the *Militia*, that I cannot tell; but upon our advancing, they dispersed themselves.

Sir *W. Thompson*. Where was my Lord *Wintoun* then?

Patten. I saw him among the *Scotch* Lords, there after his usual Manner on Horse-back, with Sword and Pistols.

Sir *W. Thompson*. Whither did they go then?

Patten. They went to *Appleby*; and from thence to *Kendall*; where a Proclamation was read, as in most of the Towns; and afterwards they went to *Kirby-Longdale*.

Sir

Sir *W. Thompson*. Did any Thing happen remarkable there?

Patten. I din'd with the Scotch Lords at *Kirby*; when the Pretender's Health and Success to our Cause were drank: That was the usual Health.

Sir *W. Thompson*. Was my Lord *Wintoun* there, and did he drink the Health among the rest?

Patten. My Lord *Wintoun* was there; and all the Table drank it.

Sir *W. Thompson*. In what Manner did you enter *Lancaster*?

Patten. More regularly than any other Town we had march'd through: They march'd into the Town with their Swords drawn, and the Highlanders were drawn round the Cross: The Gentlemen march'd into the Town on Horse-back: The Pretender was proclaim'd there.

Sir *W. Thompson*. Was my Lord *Wintoun* there when he was proclaim'd? vol. vi. p. 37;

Patten. I can't say I saw him there: I saw him in the Town at the Head of some Horse with his Sword drawn.

Sir *W. Thompson*. Was there any Cannon seiz'd at *Lancaster*?

Patten. Some Pieces of Cannon were seiz'd: We carried them with us to *Preston*.

Sir *W. Thompson*. Who was pray'd for in the Parish Church of *Lancaster*?

Patten. The Pretender: But I can't say my Lord *Wintoun* was present. The Prayer for the Pretender was by Mr. *Forster's* Direction.

Sir *W. Thompson*. Was there any Force us'd to detain my Lord *Wintoun*? or did he shew any Backwardness to go with them?

Patten. No, none at all.

Sir *W. Thompson*. My Lords, we have done with this Witness.

Att. Gen. We desire to call my Lord *Forrester*.

[Then a Chair was placed for the Lord *Forrester* near the Clerk's Table, and the Oath was administer'd to him by the Lord High Steward.]

Sir *Jo. Jekyll*. My Lords, we beg Leave to ask Lord *Forrester's* this noble Lord a Question, or two. Was your Evidence Lordship at *Preston*?

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L. Forrester. Yes, my Lords; I was there with the King's Troops; and had the Honour to command Brigadier *Preston's* Regiment. We came before *Preston* on *Saturday*, the 12th of *November* - I commanded one of the Attacks under Brigadier *Honeywood*.

Att. Gen. How many of the King's Officers and Soldiers were kill'd?

L. Forrester. I can't exactly tell: A good many. We had 'twixt Sixty and Seventy of the Regiment, I had the honour to Command, kill'd and wounded; about Thirty of them kill'd Dead on the Spot.

Att. Gen. How long did that Attack last, before they desir'd to capitulate.

L. Forrester. From *Saturday* till *Sunday*, between One and Two a Clock: The Town surrender'd about Six o' Clock on *Monday* Morning: I came into the Church-Yard, and took Possession of it. Then I went to the Mytre-Tavern, where that Lord, and the rest of the Lords were. I disarm'd them. My Lord *Wintoun* deliver'd up two Cases of Pistols.

Sir Jo. Jekyll. If my Lord hath a mind to ask any Question of the Noble Lord that hath been examin'd, we desire he may do it.

L. Wintoun. Please to ask him, whether I had Sword or Pistol in my Hand.

L. H. Steward. Take the Question in Writing.

[*Then the Clerk, went and took it.*]

Question, Whether the Arms your Lordship mention'd to have been deliver'd to you, were the Arms he had then about him? or his Lordship did not say they were in the Stable?

L. Forrester. He brought the Arms to me himself, and gave them me out of his own Hands, and desir'd me to deliver them to my Lord *Kimmergen*.

L. H. Steward. Another question is, Whether my Lord *Wintoun* did not give Orders to his Servant, to bring the Arms out of the Stable, and to give them to the Lord *Kimmergen*.

L. Forrester. I believe he did bring them out of the Stable.

L. Wintoun. I desire he may be ask'd, whether I had a Sword about me.

L. For-

L. Forrester. I did not see any Sword he had: He had a great Coat on, and might have a Sword under that; but I saw none.

L. H. Steward. Did the Prisoner at the Bar deliver himself and his Arms to your Lordship as one of those in the Surrender?

L. Forrester. I took it so.

[General Carpenter, a Member of the Commons, sworn in his Place.]

Sir J. Jekyll. Mr. Carpenter, please to give my General Carpen-
 Lords an Account when you came to *Preston*, *ter's Evidence.*
 and what happen'd there.

Gen. Carpenter. I came to *Preston* on Sunday the Vol. vi. p. 38.
 13th of *November* last, about Ten in the Morn-
 ing; the Troops under Mr. *Will's* came there the
 Afternoon before. I had Three Regiments of
 Dragoons with me; and there had been no Inter-
 course or Message pass'd before I came. Afterwards
 the Rebels sent out to know what Terms they might
 expect; and were answer'd, None, but at Discretion.
 Soon after they sent out Captain *Dalzell*, to desire a
 Cessation till next Morning. Upon which I sent in
 Colonel *Churchill* and Colonel *Cotton*, to tell them,
 I agreed to a Cessation, provided they sent out an
 English and a Scotch Lord, as Hostages. I named
 my Lord *Derwentwater* and my Lord *Kenmure*.
 Captain *Dalzell* said, he thought my Lord *Kenmure*
 wou'd not come out. Then I named Brigadier
Mackintosh. He also thought he wou'd not come out.
 I was unwilling to make great Difficulties, it grow-
 ing towards Night, and said either of the *Mackin-*
intoshes and an English Lord; and he brought out the
 Lord *Derwentwater* and Colonel *Mackintosh* as
 Hostages, that they shou'd make no Attempt to es-
 cape, or any Works for Defence of the Town.

Att. Gen. When did they agree to surrender?

Gen. Carpenter. Not till next Morning. At which
 Time they were to determine whether they wou'd
 surrender, or not.

Att. Gen. Were these all the Terms offer'd? or
 was there Hopes of Mercy given them?

Gen. Carpenter. I gave them none at all myself,
 and it is very unlikely any Body else should: I
 commanded in Chief his Majesty's Forces there, and
 if

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if any Officer took upon him to do so, without my Leave, it is what he cannot answer by the Rules and Discipline of War: I hope no Body did; I am sure I gave no such Directions.

Sir Jo. Jekyll. Did you hear any other Officer give them any Expectation of Mercy?

Gen. Carpenter. No, I did not.

L. H. Steward. My Lord Wintoun, now is your Time, if you will ask any Question of General Carpenter. [*And the Clerk was sent down to take the Question in Writing.*]

L. H. Steward. The Question my Lord asks is, Whether he was concerned in making any Capitulation, or knew any Thing about it?

Gen. Carpenter. Not that I know of. He was not the Person treated with: I treated with my Lord Derwentwater and one of the Mackintoshes.

L. Wintoun. I desire to ask my Lord Forrester a Question.

Sir Jo. Jekyll. Tho' that be out of Method, we don't oppose it.

L. H. Steward. Bring up the Question in Writing. The Question my Lord Wintoun proposes, is, Whether he had any Sword or Arms, when he first saw your Lordship at Preston?

L. Forrester. I don't remember I had a Sword from him. I can't tell whether he had a Sword about him; for he had a great Coat on: I took from him only the two Cases of Pistols which he gave me.

[General Wills sworn.]

General Wills's
Evidence.

Sir Jo. Jekyll. Pray give my Lords an Account what happen'd at Preston.

Gen. Wills. I commanded the King's Troops that attack'd the Rebels there. I came before the Town the 12th of November last at One o' Clock, and order'd two Attacks: That which lead to Wigan was commanded by Brigadier Honywood, who beat the Rebels from their first Barricade, and took Possession of some of the Houses in the Town. The other Attack, which lead to Lancaster, was commanded by Brigadier Dormer; who lodg'd his Troops near the Barricade of the Rebels. Next Day, about Two o' Clock, Mr. Forster sent out Colonel Oxburgh, an Irish Man, offering to lay down

down their Arms and submit, and hop'd I wou'd recommend them to the King's Mercy. I refus'd; and said, I wou'd not treat with Rebels; for they had killed several of the King's Subjects, and must expect to undergo the same Fate. Upon which he said, As I was an Officer, and a Man of Honour, he hop'd I wou'd shew Mercy to People who were willing to submit. I reply'd, All that I wou'd do for them was, That if they laid down their Arms, and submitted Prisoners at Discretion, I wou'd prevent the Soldiers cutting them to Pieces till I had further Orders; and wou'd give them but an Hour's Time to consider of it; and sent them back into the Town to acquaint *Forster* of it. Before the Hour expir'd, they sent out Mr. *Dalzell*, Brother to Vol. vi. p. 39. the Earl of *Carnwath*; and he wanted Terms for the Scotch, I answer'd, I wou'd not treat with Rebels, or give them any other Terms than I had offer'd them before. Then they desir'd I wou'd grant them Time till Seven o' Clock the next Day, to consult the best Method of delivering themselves up. I agreed to it, provided they threw up no new Intrenchments in the Streets, and suffer'd none of their People to escape, and that they sent out the Chief of the English and Scotch as Hostages for the Performance; and I sent in Colonel *Cotton*, who brought out the Earl of *Derwentwater* and Mr. *Mackintosh*. Next Day, at Seven in the Morning, Mr. *Forster* sent to let me know they were willing to give themselves up Prisoners at Discretion. Mr. *Mackintosh* being by, said, he wou'd not answer the Scotch would surrender in that Manner; for they were People of desperate Fortunes: He had been a Soldier himself and knew what it was to be a Prisoner at Discretion. Whereupon I bid him go back to his People again, and I wou'd attack the Town; the Consequence whereof wou'd be, That I wou'd not spare a Man of them. *Mackintosh* went back, but came running out immediately again, and said, That the Lord *Kennure*, and the rest of the Noblemen, with his Brother, wou'd surrender in like Manner as the *English*.

Sir *Jo. Jekyll*. How many were kill'd on the Attack?

Gen.

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Gen. Wills. I believe between Sixty and Seventy; but few of the Horſe; there were kill'd and wounded about an Hundred and thirty.

Att. Gen. Did you give any of the Rebels Encouragement to hope for Mercy?

Gen. Wills. All the Terms I gave was, That I wou'd ſave their Lives from the Soldiers till further Orders, if they ſurrender'd at Diſcretion; (for when Men ſurrender at Diſcretion, it is in our Power to cut them all to Pieces by the Rules of War;) and if they did not comply, I would renew the Attack, and not ſpare a Man.

L. H. Steward. You gave no Directions to your Officers to give any other Terms than you yourſelf had offer'd?

Gen. Wills. No, I did not.

Mr. Cowper. Was there any other but Colonel *Churchill* and Colonel *Cotton* ſent in by you, or by General *Carpenter*?

Gen. Wills. Yes; Colonel *Naffan*, to bid our People forbear firing, and order Colonel *Cotton* to come out with the Hoſtages; but he had no Authority to treat.

L. H. Steward. My Lord *Wintoun*, the Clerk is ſent down to you again; if you have any Queſtion, he will take it.

[*The Clerk return'd with the Queſtion in writing to the Lord High Steward.*]

L. H. Steward. The Queſtion my Lord propoſes to General *Wills* is, Whether you, General *Wills*, gave any Summons to ſurrender before you made the firſt Attack? or if you did not make the Attack without any Summons at all?

Gen. Wills. When I was viewing the Town, they ſhot two of my Dragoons; and I did not ſummon them.

L. H. Steward. Another Queſtion my Lord asks, is, Whether you offer'd to prevent the Forces falling on the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. Wills. I did hinder the Troops falling on them, after they offer'd to ſurrender.

L. H. Steward. Another Queſtion is, What you know, or have been informed of his Lordſhip's being

being against coming to *England*? or of my Lord's being against fighting with your Troops, or General *Carpenter*'s?

Gen. Wills. I never saw my Lord *Wintoun* till four Days after he was taken at *Preston*; so that I can say nothing to it.

L. Wintoun. I desire General *Carpenter* may be ask'd the same Question.

Gen. Carpenter. My Lords, I heard, that at *Jedburg* they held a Council of War: But this is only hear-say; I speak not of my own Knowledge.

Sir Jo. Jekyll. For the sake of Evidence, it is incumbent on us to desire that my Lord confine himself to ask the General what he knows, and not to what he heard said.

[*Colonel Churchill sworn.*]

Mr. Cowper. Was you sent into *Preston*? and by whom?

Col. Churchill's Evidence.
Vol. vi. p. 40.

Col. Churchill. I came to *Preston* about Ten o' Clock on *Sunday* Morning with General *Carpenter*: About One they sent out to capitulate, and at Five I was sent in by General *Carpenter*. Their request was, That they might have Time till next Day to consider whether they should surrender, or not. My Orders were, They shou'd have that, if they sent out Hostages that none of them shou'd attempt to escape, and no Defence shou'd be made in the Town: Those named by General *Carpenter*, were the Lord *Derwentwater*, Lord *Widdrington*, Lord *Kenmore*, or *Mackintosh* for the Scotch. I directed them to send the Hostages to me. They cou'd not find my Lord *Derwentwater* or *Widdrington*, and *Mackintosh* was gone to Bed. A little before Eight I told them the Terms; and my Lord *Derwentwater* and *Mackintosh* went out with me. I carried them to the two Generals; and at Seven next Morning they surrender'd themselves.

Mr. Cowper. Did you, by Commission from the General, or of your self, give them any Hopes of Mercy?

Col. Churchill. I had no Power; and was so far from doing it, that I don't remember any Thing was said about it on either Side.

Mr. Cowper.

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Mr. Cowper. Did you hear any other Officers give them such Assurance?

Col. Churchill. I never heard a Word like it.

Att. Gen. Who did you treat with?

Col. Churchill. I was carried to Mr. Forster, and then to my Lord Kenmure.

Att. Gen. Who was present besides my Lord Kenmure?

Col. Churchill. I saw a great many; but did not know any of them.

[Colonel Cotton sworn.]

Col. Cotton's Evidence.

Att. Gen. Was you sent into *Preston* by General *Wills*? And what Instructions were given you?

Col. Cotton. At their Desire I was sent into the Town by General *Wills*: I told them we could give them no Terms. They said there were Disputes between the Scotch and English, and desired till next Morning to reconcile them. General *Wills* sent me into the Town again, to allow them that Time, provided the Lords would give their Words that they would throw up no Works for their Defence, and do their utmost that none of their People should escape. The Lords did give their Words; and the Lord at the Bar was present.

Att. Gen. Upon what Terms did they surrender?

Col. Cotton. I had no Power from General *Wills* to promise them any Terms; nor I did not: I told them I had no Power to offer them any.

Sir Jo. Jekyll. Was there any Overtures made of obtaining the King's Mercy?

Col. Cotton. I had no such Orders; neither did I offer it, directly or indirectly.

L. Wintoun. I wou'd know, whether they did not take Prisoners, and kill them, notwithstanding the Capitulation?

Col. Cotton. My Lords, upon my coming out of Town, we were alarm'd with an Account that several of them were attempting to escape; and about Six of those who were endeavouring it were cut to Pieces; and upon this Breach of their Parole, Colonel *Churchill* and myself were sent in to demand Hostages; and brought out the Lord *Derwentwater* and Mr. *Mackintosh*.

Brigadier

[Brigadier Munden sworn.]

Att. Gen. We desire to know if he was sent with these two Colonels into the Town? and what Directions were given him? Brigadier Munden's Evidence.

Brig. Munden. After the Rebels demanded an Audience of General *Wills*, their first Demand was for Terms, and were answered, That General *Wills* would not treat with Rebels; but if they surrendered at Discretion, their Lives should be spared till his Majesty's Pleasure was known. If they expected other Terms, they might return into Town immediately, and he would attack them, and cut them to Pieces. Afterwards my Lord *Derwentwater* and Mr. *Mackintosh* came out to us; and I heard them frequently repeat their Request to the General for Terms, and *Mackintosh* gave a particular Account of the Bravery and Hardiness of their Troops. Mr. *Wills* told him, he might have tried them, if he pleased; and then it would have appeared whether the King's Troops, or a Parcel of Rebels, would have acted the bravest Part. Mr. *Wills* received them with the utmost Detestation and Contempt, and gave them no Hopes of Mercy, directly or indirectly. Vol. vi. p. 41.

Att. Gen. Did you hear any other Officer offer them any other Terms?

Brig. Munden. No, I did not hear any.

Sir *Jo. Jekyll.* Did my Lord *Wintoun* give his Parole?

Brig. Munden. I very well remember Col. *Cotton* said, he had received his Parole of Honour among the rest.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the House of Commons have done with this Evidence against you; therefore this is the proper Time for your Lordship to make your Defence. Take your own Method, either by calling your Witnesses, or making such Observations in your Defence, as you think proper.

L. Wintoun. Please to allow me some Time; for my Witnesses are not yet come: Please to allow me till this Day Month, till they come up. It will signify nothing to examine Witnesses after I am dead. I never saw my Council but once, to instruct me what to say.

There

[*There being a Noise in Court, Proclamation was made for Silence.*]

L. H. Steward My Lord, offer what you have to say while the Court is in Silence.

L. Winton. The most material of my Witnesses are not come up: They will be here some Time next Week. I have not talked to my Council.

Att. Gen. What that noble Lord insists upon now, is out of Time. When the Evidence for the Prosecution is given, the Prisoner is not to have Time to delay the Proceedings.

Mr. Cowper answers the Prisoner's Demand for putting off his Tryal.

Mr. Cowper. "My Lords, we should have been very far from pressing to bring on his Lordship's Tryal sooner than is consistent with the Rules of Justice: But when the Time your Lordships have already allowed him on several Applications is considered; when he had Notice ever since he was made Prisoner at *Preston*, that it concerned him to provide for his Defence; when we reflect how long it is since the Commons exhibited their Impeachment, it is surprizing to hear his Lordship insist he hath not had Time to bring up his Witnesses. It may easily be explained, with what View his Lordship is advised to make this Defence; namely, to move the Compassion of the People; and I fear, to traduce the Justice of your Lordships Proceedings. He hath had more than Time sufficient, more than any one in the like Circumstances, hath been allow'd; and to have nothing to offer at last, but that his Witnesses are not come, without producing a single Witness to prove that he has, or expects any one Witness to appear for him. My Lords, the stated Rules in Tryals of this Nature ought to be for ever sacred: No Prisoner has a Right to be indulged in Methods unknown to the Constitution: There ought to be no Interruption or Delay whatever, when a Prisoner impeached by the Commons puts himself upon his Defence, and is brought to Tryal. Your Lordships lately denied the Prisoner any further Time; and if it was thought improper to be granted then; now he hath put himself upon Tryal at your Lordships Bar, surely he shall not be indulged

“ged in the same Request. — Whatever Compa-
 “sion the Commons may entertain for this unhap-
 “py Lord, yet when they reflect, that the Methods
 “and Form of Justice are essential to Justice, they
 “think themselves obliged to oppose a new At-
 “tempt, and hope the Tryal shall proceed.”

L. Wintoun. My Witnesses will be up about Mon- Vol. vi. p. 421
 day or Tuesday next. I have had no longer Time
 than since the 10th of *February* to bring them up,
 when it was very bad travelling.

L. H. Steward. My Lord *Wintoun*, you have heard
 the Commons oppose your Request, and their Rea-
 sons for it: Does your Lordship still insist upon it,
 or do you withdraw your Request?

L. Wintoun. I insist upon it, my Lords.

*[Then the Peers adjourned to their House; and an
 Hour after returned to the Hall.]*

L. H. Steward. I am commanded by the Lords
 to let you know, that having considered your Re-
 quest, they are of Opinion it is not consistent with
 the Rules of Justice, to allow you further Time for
 sending for your Witnesses; therefore you are to
 proceed in your Defence. And in respect of the
 Lowness of your Voice, the Lords have ordered a
 Person to stand by you, to report to their Lordships
 what you say during the Tryal.

*[A Clerk was sworn to make true Report. Whereup-
 on the Lord Wintoun spoke so very low, that scarce
 any one could hear him.]*

Sir Jo. Jekyll. My Lords, it is not your Intention
 that the Lord at the Bar should speak so low, that nei-
 ther we, nor any Body else that is near him, can
 hear what he says.

L. H. Steward. My Lord *Wintoun*, speak as
 loud as you can, so that the Managers may hear.

Clerk from L. Wintoun. I think it very hard, and
 great Injustice, that I should not be allowed Time
 for my Defence, that my Witnesses might come up;
 and that I should be tied down to a foolish Form,
 which I am not accustomed to, when I am in Dan-
 ger of my Life.

[Then the House adjourned.]

The Tryal of GEORGE Earl of

[Friday, March 16. The Second Day.]

L. H. Steward. I again remind your Lordship, you are to speak as loud as you can.

Clerk from L. Wintoun. My Counsel is ready here to speak for me.

L. H. Steward. Your Lordship cannot have Counsel to speak in your Defence, unless it be to Matter of Law. The Law supposes every Man sufficient to answer for himself, as to Matter of Fact.

Lord Wintoun
insists on his
Counsel's speak-
ing to Matters
of Fact.

Clerk from L. Wintoun. My Lords, I am not accustomed to speak on such Occasions; therefore I hope your Lordships will allow me Counsel to speak for me.

L. H. Steward. The Law in this Case admits of no Exception, but holds to the general Rule.

Clerk from L. Wintoun. I don't understand the Law. I am a Stranger to the Customs of the House; therefore hope your Lordships will allow me Counsel.

L. H. Steward. I believe your own Counsel will tell you, as the Law stands, they cannot be heard for you as to Matter of Fact. Have you any Witnesses to call in your Defence?

Clerk from L. Wintoun. I told your Lordships Yesterday, my most material Witnesses were not come up.

L. H. Steward. I acquainted your Lordship Yesterday, and now remind you of your Petition exhibited to the House of Peers; wherein you acknowledge a great Number of your Witnesses are come up. You only then pretended four were absent. Doth your Lordship design to make no Manner of Use of that great Number of Witnesses you admitted were come?

Clerk from L. Wintoun. They will serve for nothing without those Witnesses coming.

L. H. Steward. My Lord, please to observe the Lords wait with great Patience, to see if you will be better advised, and go into your Defence.

Clerk from L. Wintoun. It was always the Custom in any Court where I was, for People to be allow'd to speak, or the Counsel for them: I am not accustomed to speak in my own Defence; therefore hope you will allow my Counsel to speak for me. They have a Point of Law to speak to, they say; but I know nothing of it.

L. H. Steward. Though your Lordship can't argue the Point of Law, can't you propose what the Question is?

Clerk from L. Wintoun. It is impossible for me to do a Thing I don't understand. I don't know what the Point of Law is, no more than a Man that knows nothing of it.

[*Here some laugh'd.*]

L. Wintoun. I am only speaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordship observes well: I hope every one will forbear that. Will your Lordship please to name what Matter the Question concerns?

Clerk from L. Wintoun. It will be something about the Tryal; no doubt something of what the Common People have been speaking about. — It is no doubt in answer to the Managers of the House of Commons. I have not seen my Counsel since I was here; I have been kept close Prisoner, so that I have not had Time to be informed of all the Points of Law they have to plead. The Counsel themselves will tell what Points of Law they have to plead.

L. H. Steward. You should propound your own Question before your Counsel speak. Before it appears to be a Point of Law, it is not fit for Counsel to be heard.

Clerk from L. Wintoun. It is impossible I should direct Counsel; I that don't understand Law.

L. H. Steward. Did you not speak to your Counsel last Night?

Clerk from L. Wintoun. I could not, because it was late when I went from hence. I was lock'd up, and could not see them. I see no Body but the Guards.

L. H. Steward. Hath not your Lordship seen your Counsel, as often as you requir'd an Order for so doing?

Clerk from L. Wintoun. I never saw my Counsel but once, before I gave in my Answer.

L. H. Steward. Did you desire to see them oftner?

Clerk from L. Wintoun. My Solicitor spoke to them; but my Witnesses not being come up, it was needless for me to speak to my Counsel before they knew what the Witnesses had to say, and so might draw up a State of the Question. I did not doubt but

the Lords would give me more Time; and therefore was not so desirous to see my Counsel as I should have been, if I thought I should have been so much cramp't in Time.

Mr. Cowper begins to sum up the Evidence.

Mr. Cowper. “**M**Y Lords, it was reasonable to suppose, that the Prisoner “ having pleaded *Not Guilty*, would have given some “ Evidence in support of his Plea; but since he “ seems resolved not to enter into a Defence, I “ think it my Duty to say something on this unexpected Occasion. — The Treason is such, and “ the Evidence so full, that his Lordship’s Behaviour, unaccountable as it is, is more to his Purpose than any other could have been. Whoever “ considers the Lord *Wintoun*’s Answer, will find “ him confessing the several Overt-Acts of Treason “ laid to his Charge, and then drawing a false Conclusion, that he is *Not Guilty*. He denies that “ what he has done was with a traiterous Intention, “ and emphatically asserts, that the pure Streams “ of Loyalty which have run in the Blood of his “ Ancestors, were derived to him uncorrupted: And “ thus a Popish Pretender being the Object of his “ Lordship’s Loyalty, he thinks he may be guilty of “ the whole Impeachment without being a Traytor; “ and how far he may think fit to acknowledge “ your Lordship’s Jurisdiction, I know not. As to “ the Impeachment, your Lordships have observed, “ that it hath been fully proved.” [*Here he begins to sum up the Evidence, already given at large.*]

L. Guilford. I think it proper, before the House of Commons sum up their Evidence, to move your Lordships to adjourn to the House of Lords.

[*Then the House adjourn’d, and in about half an Hour after returned.*]

Lord High Steward demands what the Prisoner has to say before the Commons proceed further.
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L. H. Steward. My Lord *Wintoun*, I am ordered by their Lordships to acquaint you, that they are still ready to hear what you have to say in your Defence; and any Witness you are pleased to call: But then, if you neglect this Opportunity, it is their Lordships Pleasure, that the Managers of the House of Commons should go on with their Reply; And
if

if such Reply be made, you will have no further Opportunity to alledge or prove any Thing. And I am to acquaint you also, that it is their Lordships Opinion, that if you have any Question of Law, you must propound it to their Lordships yourself.

Clerk from L. Wintoun. I believe my Counsel have something to say in answer to the Managers : But the Gentleman who was present [*the Clerk*] knows they would not let me know what they had to say.

L. H. Steward. If your Lordship has any Notes to help your Memory in your Defence, look upon them.

L. Wintoun reads, and the Clerk repeats. The Counsel have a Point of Law arising from what hath passed in the House, to shew that he is such a Person as is not capable of committing the Treason laid in the Impeachment. I plead, *Not Guilty*; and this alledges the same. I say I am *not guilty*; and the Paper says, it will demonstrate I am not. The Prisoner says he is *Non Compos*.

Clerk from L. Wintoun. I don't understand Law, and how should I introduce a Point of Law?

L. H. Steward. If your Lordship doth not proceed in your Defence, I shall signify to the Managers to reply; and the Lords will not allow you to speak afterwards.

Clerk from L. Wintoun. The Counsel desire to be heard : Since they have written a Paper, to be heard on that Paper.

L. H. Steward. The Paper is allowd to help your Memory; but you must not give in a Paper, as written by your Counsel, nor mention it as such.

Clerk from L. Wintoun. I desire my Counsel may be heard to the Point of Law I read out of the Paper.

L. H. Steward. You have by the Help of a Paper propounded what you call a Point of Law; their Lordships have heard it. I don't find any Motion made to adjourn, to consider whether such a Point is fit for your Counsel to be heard to. If there be any Doubt, you will see it by such a Motion.

[*Here was a short Pause.*]

L. H. Steward. If you do not proceed, I must intimate to the Managers, that they may reply.

The Tryal of GEORGE Earl of

Clerk from L. Wintoun If your Lordships will allow my Counsel to be heard on the Point of Law I have given in.

L. H. Steward. It is no Point of Law which you propose.

Clerk from L. Wintoun. I am not a Judge of a Point of Law ; if your Lordships will hear the Counsel, they will tell you what it means.

L. H. Steward. Gentlemen of the House of Commons, you may reply.

The Managers
proceed in their
Reply.

Mr. Cowper. “ **M**Y Lords, I was observing that the Behaviour of the Prisoner,
“ My Lord *Wintoun*, during the whole Progress of
“ the Rebellion, appeared in a quite different Light
“ to that in which he would now willingly appear.
“ Your Lordships find him, according to the Evidence at every false Alarm, very inquisitive to know the Occasion. Having assum'd the Command of a Squadron, his Lordship was instantly at his Post, ready to encounter his Majesty's Forces ; and the Reverend Mr. *Patten* has done Justice to his Lordship's Vigilance and Courage on this Occasion : But it seems the Alarms were both false. Hence we may observe, that Alarms may be false, and *Dangers may be imaginary* ; which Mr. *Patten*, and Men of his Principles, would do well to reflect on at Leisure. [*Here Mr. Cowper proceeds to sum up the rest of the Evidence.*] The
“ Commons cannot but take a particular Satisfaction in this Lords putting himself upon his Tryal,
“ which has given them an Opportunity, in the most publick Manner, to vindicate his Majesty's Generals from a malicious Calumny suggested, even by this Lord in his Answer to the Impeachment, as well as by the rest of his Accomplices already attainted. It seems not to be accidental, that all the Lords impeach'd (false as it appears to be) should alledge, that they surrendered upon Promises, or Hopes given them of Mercy ; considering that there is not the least Shadow of Truth to support this Suggestion. It is no uncharitable Reflection to say, That their Lordships, to supply the Mischief their Arms could not accomplish, were willing to assist their Party, by furnishing them with an Untruth to propagate. I may, with the Con-
“ sent

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" sent of this whole Assembly, presume to say it is
 " false, nay, that the very Reverse is true. The Re-
 " bels would have obtain'd a Promise, or even a
 " Hope of being recommended; but the Generals
 " rightly told them, *Rebels deserved no Mercy; nor*
 " *would they treat with Rebels of surrendering other-*
 " *wise than at Discretion.* I cannot conclude with-
 " out observing a Question his Lordship asked dur-
 " ing the Course of the Evidence, namely, Whether
 " our Men (the Rebels) were not slain, during the
 " Time of the Cessation of Arms at *Preston*? Which
 " in Fact it seems was true; and if it had been an-
 " swered in the affirmative, without Explanation, his
 " Lordship would have been gratify'd with furnish-
 " ing his Friends with another Story, which, well
 " improved, might have lasted a good while. But
 " when the Witness, discerning the Tendency and
 " Malignancy of the Question, answered, That
 " the Rebels had stipulated and agreed that no Works
 " should be erected in the Town during the Sus-
 " pension; and that no Person in the Town should
 " go out during that Time; in Breach of which
 " Agreement, six of the Rebels attempted Sword-
 " in-Hand to charge through the King's Troops; in
 " which Attempt they fell. From whence it appears
 " that the King's Troops did no more than their
 " Duty.

Sir W. Thompson. " MY Lords, The Answer of Sir William
 " the Prisoner not being sup- ^{Thompson's Re-}
 " ported by Evidence, ought to go for nothing; but ^{ply.}
 " since several Things are alledged to mitigate or
 " justify his Proceedings, which are falsify'd by our
 " Evidence, I beg Leave to take some Notice of
 " it.

" I agree with him, that it will be very pleasing to
 " the Commons to see an innocent Man acquitted;
 " nor do I differ with him in his Assertion, That to
 " be taken with Persons in Arms against the Go-
 " vernment, is a reasonable Presumption of his Guilt,
 " and a just Foundation to accuse him with the rest;
 " But as to the Circumstances of his Case being
 " so different from the others, as to require your
 " Lordships to distinguish him in Judgment, this
 " I see little Reason for, from any Thing that has
 " been offered to your Lordships. He is pleased to

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“ give an Account of what happen’d to him eight
 “ Years ago, when he endeavour’d to avoid the
 “ Suspicion of the Government. He mentions the
 “ ill Usage of the Militia, and the King’s Troops, the
 “ Rifling his House, &c. without saying when they
 “ happen’d, or from whom. He says he was un-
 “ fortunately driven into the Company of some Per-
 “ sons mentioned in the Impeachment ; that he
 “ joined them without any Intention to assist their
 “ Designs, &c. But the Evidence sufficiently explains
 “ how far he abetted their Undertakings : It is pro-
 “ ved he brought fourteen of his Domesticks with
 “ him to the Rendezvous, most of them well arm-
 “ ed and accoutered. [*Here he proceeds to sum up
 “ the Evidence again, and then goes on.*] My Lords,
 “ whether the whole Tenor of this Proceeding does
 “ not manifest the Intention of this noble Lord ;
 “ and whether the Evidence of these Facts does not
 “ falsify every Allegation in his Answer, by which
 “ he would justify himself, your Lordships will ea-
 “ sily determine. As to that Assertion, That he ne-
 “ ver degenerated from his loyal Ancestors, so as to
 “ form any Design to subvert the Constitution, &c.
 “ I wish I could observe, for the sake of this unhappy
 “ Lord, that it were not too evident what Consti-
 “ tution he has ventured his Life and Fortune to
 “ preserve. All Mankind who do not shut their
 “ Eyes, must see that the Design of this Noble Lord,
 “ and his Accomplices, was to dethrone his most
 “ sacred Majesty, our Protestant King ; and in his
 “ stead, to set up a Popish Pretender to his Crown,
 “ bred up in Superstition, and the Maxims of Ty-
 “ ranny. That their Success must have produced a
 “ dreadful Scene of Blood and Confusion ; the
 “ Lives of the King, the Royal Family, your
 “ Lordships, and those other brave Britons who
 “ would have stood up in Defence of the Re-
 “ ligion, Laws, and Liberties of their Country,
 “ must have been sacrificed to the Rage of Popish
 “ Bigotry, and the insatiable Cruelty of Jesuits and
 “ Priests, our most implacable Enemies. — I can’t
 “ but take notice here, that his most gracious Ma-
 “ jesty, against whom this unfortunate Lord hath
 “ so signally offended, hath been pleas’d to express
 “ his mild and gentle Disposition, even to him, and
 “ his Associates, his most inveterate Enemies. *It*
 “ *was*

“ *was an Uneasiness to him, That he could not distinguish the first Years of his Reign by the endearing Mark of Peace and Clemency : It afflicted him that the Calamities of his faithful Subjects, should require indispensable Returns of Severity. And he presum'd their Lordships natural Compassion* Vol. vi. p. 47.
 “ *would encline them to the same merciful Disposition : But the Commons hoped their Lordships would have some Regard to the Lives of those gallant Men, whom the Rebels had murdered, and lost their Lives in their Country's Cause : That their Blood demanded the Justice of that Country, in whose Defence it was spilt : That the publick Safety also required their Lordships exemplary Justice on the principal Offenders : That this was the most effectual Method to prevent future Insurrections, and render our present happy Establishment firm and lasting.*”

Sir Jo. Jekyll. The Commons having nothing more to offer, desire your Lordships Opinion on this Evidence.

[*Then the Lords adjourn'd to their House ; and being returned, and the Lord High Steward seated in the Chair, he stood up uncovered, and beginning with the youngest Peer, said,*]

Thomas Lord Parker. What says your Lordship ? Is George Earl of Wintoun guilty of the High Treason whereof he stands impeached, or not guilty ?

Then Thomas, Lord Parker standing up in his Place, and laying his Right Hand on his Breast, said, *Guilty upon my Honour*; and in like Manner all the Lords present found him Guilty, who were, Richard Lord Cobham, Henry Lord Carleton, Bennet Lord Harborough, James Lord Saunderson, Robert Lord Bingley, Allen Lord Bathurst, Thomas Lord Mansfell, Charles Lord Boyle, Simon Lord Harcourt, John Lord Belhaven, William Lord Ross, John Lord Gower, Maurice Lord Haverham, Henry Lord Gilbert, John Lord Ashburnham, Francis Lord Guilford, Richard Lord Lumley, Peregrine Lord Osborne, Charles Lord Cornwallis, John Lord Colepeper, Charles Lord Brace, William Lord Brook, James Lord Compton, William Lord St. John,
 Thomas

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Thomas Lord Howard of Effingham, Charles Lord Fitzwalter, John Lord Delawar, Peregrine Lord Willoughby of Eresby, Henry Lord Viscount Tadcaster, Henry Lord Viscount Lonsdale, Talbot Lord Viscount Longueville, Charles Lord Viscount Townshend, Laurence Lord Viscount Say and Seal, George Earl of Halifax, John Earl of Bristol, Heneage Earl of Alesford, Charles Earl of Tankerville, Lewis Earl of Rockingham, James Earl of Carnarvon, Thomas Earl of Strafford, Archibald Earl of Hly, Henry Earl of Deloraine, Hugh Earl of Londoun, Thomas Earl of Hadington, John Earl of Rothes, Hugh Earl of Cholmondeley, Francis Earl of Godolphin, John Earl Poulet, John Earl of Greenwich, Henry Earl of Grantham, William Earl of Jersey, Edward Earl of Oxford, George Earl of Warrington, Richard Earl of Scarborough, Henry Earl of Portland, Robert Earl of Holderness, Henry Earl of Rochester, Daniel Earl of Nottingham, Charles Earl of Radnor, Richard Earl of Burlington, Arthur Earl of Anglesey, Edward Earl of Clarendon, Thomas Earl of Stamford, Charles Earl of Manchester, George Earl of Northampton, John Earl of Leicester, Scroop Earl of Bridgewater, Lionel Earl of Dorset and Middlesex, Henry Earl of Lincoln, Thomas Earl of Pembroke, James Earl of Derby, William Marquis of Annandale, Thomas Duke of Newcastle, Evelin Duke of Kingston, Robert Duke of Ancaster and Kesteven, Lord Gr. Chamberlain, Henry Duke of Kent, John Duke of Roxburgh, James Duke of Montross, John Duke of Montagu, John Duke of Buckingham and Normanby, John Duke of Marlborough, Charles Duke of Shrewsbury, Charles Duke of St. Albans, Charles Duke of Richmond, Charles Duke of Somerset, Charles Duke of Bolton, Lord Chamberlain of his Majesty's Household, William Duke of Devonshire, Lord Steward, Charles Earl of Sunderland, Lord Privy Seal; and last of all the Lord High Steward said, My Lords, I am of Opinion that George Earl of Winton is Guilty of the High-Treason, whereof he stands impeach'd, upon my Honour.

[Then Proclamation was made for Silence, and to bring forth the Prisoner.]

C

L. H. Steward.

L. H. Steward. George Earl of Wintoun, the Lords, having consider'd of the Charge, the Evidence against you, and your Defence, are of Opinion, that your Lordship is Guilty; and have found your Lordship guilty of the High-Treason of which you stand impeach'd.

[Then the Lords return'd to their House.]

Monday, March 19. the third Day, the Prisoner was brought to the Bar.

L. H. Steward. George Earl of Wintoun, Your Peers, having convicted you of High-Treason, I am now to ask your Lordship, if you have any Thing to offer, why Judgment of Death should not pass upon you according to Law?

The Prisoner ask'd, what he has to say in Arrest of Judgment.

Clerk from L. Wintoun. I have a Point to offer to your Lordships, to shew that I am such a Person, against whom, by Law, Judgment ought not to be given.

L. H. Steward. Will your Lordship state the Point?

Clerk from L. Wintoun. I don't know what your Lordship means.

Sir Const. Phipps. If your Lordships please, we have a Point of Law humbly to offer to your Lordships, If—

Att. Gen. I humbly insist, That they are not to speak, unless there be a Point stated by the Prisoner, and which your Lordships shall think to be a Point of Law.

Mr. Cowper. We are surpriz'd to find that Gentleman shou'd presume to speak without your Lordships Direction: He cannot but know that the Prisoner is to propound the Question in Law.

L. H. Steward. Sir Constantine Phipps, you know the Practice to be so: The Point must be first stated by the Prisoner, before you can speak to it.

The Point of Law must be stated by the Prisoner.

Sir Const. Phipps. My, Lords, if I had been heard but ten Words more—

Sir W. Thompson. We humbly insist, That that Gentleman be not heard one Word more.

[Here, upon the Motion of Lord Hay, the Lords adjourn'd to their House, and return'd in half an Hour.]

L. H. Steward.

Whether he be *L. H. Steward.* My Lord *Wintoun*, the Lords
Non Compos, is have consider'd of the Matter you mov'd in Arrest
 Matter of Fact, of Judgment, *viz.* That you are not such a Person
 and not of Law. against whom Judgment of Death for High-Treason

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ought to be pronounc'd; and are of Opinion, That this is Matter of Fact, and not of Law; and that the Lords think you are such a Person, against whom Judgment ought to be given in this Case. I am order'd also to reprimand you, Sir *Constantine Phipps*, for presuming to be so forward to speak for the Prisoner at the Bar before a Point of Law was stated, and you had Leave to speak to it; and your Fault is the greater, because you cou'd not but know that this is a Matter of Fact, and that the Law is not doubtful one way or other, the Fact being suppos'd. My Lord *Wintoun*, I am again allow'd to ask your Lordship, if you have any Thing further to alledge, why Judgment of Death shou'd should not pass upon you?

Clerk from L. Wintoun. My Counsel are ready to offer in Arrest of Judgment, that the Impeachment is insufficient, because the Time of committing the Treason is not laid with sufficient Certainty.

L. H. Steward. Is it your Lordships Pleasure, that the Counsel for the Prisoner be allow'd to speak to this Point?

Lords. Ay, Ay.

L. H. Steward. Gentlemen, that are of Counsel for the Prisoner, you have Liberty to speak to the Point propos'd.

Sir Constantine Phipps argues, that the Impeachment is not laid with sufficient Certainty.

Sir Const. Phipps. "MAY it please your Lordships, we humbly apprehend the Impeachment against the noble Lord at the Bar, to be insufficient: It is so uncertain that no Judgment can be given upon it. In Indictments, even for Trespasses, the Law requires the certain Day when the Offence is suppos'd to be committed to be alledg'd; and if a particular Day be not laid, the Indictment is insufficient. And if such Certainty is requir'd in Offences of the most Minute Nature, much more in Capital Crimes, and especially in Treason, with which this Noble Lord is charg'd.

"One Reason why in Indictments for High-Treason a certain Day shou'd be assign'd, is for the

“ the Advantage of the Prisoner, that being apprized
 “ of the Time when those Facts are supposed to
 “ be committed, he may be the better able to make
 “ his Defence: He may possibly prove he was in
 “ another Place, or in other Company, at the
 “ Time he is charged with committing the Treason,
 “ or may by other Circumstances make his
 “ Innocence appear.

“ Another Reason, is for the Benefit of the
 “ Crown, that it may be known to what Time the
 “ Forfeiture shall relate; for if there be no precise
 “ Time alledg'd in the Indictment, the Forfeiture
 “ can relate no farther than to the Judgment.

“ Indictments have been held insufficient for less
 “ Faults, than not specifying the Day; but I will
 “ not trouble your Lordships with citing Authorities;
 “ for there is not a Gentleman of the long
 “ Robe but will agree an Indictment for any
 “ Capital Offence to be erroneous, if the Offence
 “ be not alledg'd to be committed on a certain
 “ Day.

“ My Lords, an Attainder upon an Impeachment
 “ subjects the Offender to the same Punishment
 “ and Forfeitures, as an Attainder upon an
 “ Indictment; and there should therefore be the same
 “ Certainty in one, as in the other. And if equal
 “ Certainty be required in both, we submit it to your
 “ Lordships, whether this Impeachment be not
 “ erroneous and insufficient, there being no
 “ certain Time alledg'd when the Treason or Overt-Acts
 “ were committed.

“ The Treason alledg'd, is conspiring and imagining
 “ the Death of the King; and the Impeachment
 “ sets forth, that this noble Lord did *in*
 “ *or about the Months of September, October, or*
 “ *November, 1715.* together with others, in the
 “ Impeachment named, traiterously compass the
 “ Death of his most sacred Majesty: That he did
 “ *in or about the said Months, or some of them,* together
 “ with the rest, agree and confederate to levy
 “ War against his Majesty: That *in or about the said*
 “ *Months, or some of them,* this noble Lord, with
 “ others, did levy War, and did march through
 “ several Parts of the Kingdom, and did proclaim
 “ the Pretender to be King: And that *on about the*
 “ *9th, 10th, 11th, 12th, or 13th* of the said Month

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“ of *November*, this noble Lord, with others, did
 “ seize and possess themselves of the Town of *Prest-*
 “ *on*, and fought against his Majesty's Forces.

“ As to the first Overt-Act; can any Thing be
 “ more uncertainly alledg'd, than to say that the
 “ Conspirators did in or about the said Months,
 “ of some of them, and at divers other Times and
 “ Places within this Kingdom, *confederate*, &c. to
 “ levy War.

“ The next Overt-Act, which is *actual levying of*
 “ *War*, is not laid with greater Certainty: And as
 “ to the third, *the proclaiming the Pretender*, there
 “ is no certain Time or Place alledg'd when or
 “ where the Pretender was proclaim'd, but only
 “ that it was during their March and Invasion:
 “ The last Overt-Act, *the seizing of Preston*, seems
 “ to be laid with greater Certainty; but then
 “ the Words [*on or about*] leave it at large; for
 “ no Man can tell how many Days may be in-
 “ cluded in these Words [*or about*.]

“ We apprehend a Charge of this high Nature
 “ ought not to be alledg'd with such Uncertainty;
 “ and that the Impeachment is as erroneous as
 “ an Indictment would be. I do not pretend to
 “ any great Skill in Parliamentary Proceedings;
 “ but I never saw a Charge exhibited in any other
 “ Court in so uncertain a Manner, unless in Libels
 “ in the Ecclesiastical or Admiralty Courts, which
 “ cannot influence the Case before your Lordships,
 “ this being a Proceeding according to the Course
 “ of the Common Law.

Mr. William's
 Argument as to
 the Uncertainty
 of the Impeach-
 ment.

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Mr. Williams. “ I am also assign'd by your Lord-
 “ ships of Counsel for this un-
 “ fortunate Lord, and humbly insist, that there is
 “ a Defect in this Impeachment, in regard no cer-
 “ tain Day is laid when the Treason is charged to
 “ have been committed. I apprehend the House of
 “ Commons to be the Grand Inquest of the Nation;
 “ and that their Impeachment is in the Nature of
 “ an Indictment found by that Grand Inquest, dif-
 “ fering from an Indictment in this Respect, that
 “ an Indictment is found by the Inquest of a *County*
 “ *only*; but an Impeachment by the Grand In-
 “ quest of the whole Kingdom. And as the omitting
 “ the laying a certain Day when the Treason was
 “ com-

" committed, would be a material Fault in the
 " Case of an Indictment, so is it as material a De-
 " fect in the Case of an Impeachment.

" It will not, I presume, be expected from us, that
 " we should cite P^recedents of Impeachments:
 " However, I shall beg leave to mention one fresh
 " in your Lordships Memories; and that is in the
 " Case of Doctor Sacheverel.

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" The Doctor was impeach'd before your Lord-
 " ships, for seditious Expressions in two Sermons;
 " and in that Impeachment, the precise Days are
 " laid when the Doctor preach'd each of them.
 " And by the like Reason, I apprehend a certain Day
 " ought to be laid in this Impeachment, when the
 " Treason was committed. I have nothing else to
 " say on behalf of this unhappy Lord, unhappy as be-
 " ing in that doubtful State of Memory: Not *insane*
 " enough to be within the Protection of the Law,
 " nor at the same Time *sane* enough to do him-
 " self in any Respect the least Service whatever.

[Here the Managers interrupted the Council.]

L. H. Steward. Mr. Williams, I apprehend the
 Reason the Managers appear uneasy with you, is,
 That you are going into a Matter of Fact, which
 you have not Leave to speak to. You must con-
 fine yourself to the Point of Law that was stated.

Mr. Williams. " I shall take up no more of your
 " Lordship's Time, but humbly hope, that as in all
 " Indictment for Treason, the Want of laying a Day
 " when the Treason is charged to have been com-
 " mitted, is a manifest Error; as the constant Forms
 " of Indictments are so, and the Reason of the Law
 " requires they should be so; therefore for want
 " of the like Certainty in this Impeachment; we in-
 " sist, with great Submission, that the Impeachment
 " is defective, and pray that the Judgment against
 " this unfortunate Lord may be arrested.

Mr. Walpole. " MY Lords, the Counsel for the
 " Noble Lord at the Bar seem
 " to forget in what Court they are: They have ta-
 " ken up so much of your Lordships Time in quo-
 " ting Authorities, to shew what could quash an In-
 " dictment in the Courts below, that they seem to
 " forget

Mr. Walpole
 answers the
 Prisoner's
 Counsel.

“ forget they are now in a Court of Parliament, and
 “ on an Impeachment of the Commons of *Great*
 “ *Britain*. Should we admit all that they have of-
 “ fered, it would not follow that the Impeachment
 “ is insufficient. Neither of the learned Gentlemen
 “ have offered to produce one Instance, where the
 “ Sufficiency of an Impeachment was called in
 “ question from the Generality of the Charge: Nor
 “ do the Commons think it necessary, in Justice to
 “ the Noble Lord at the Bar, that a certain Day
 “ should be mentioned in the Impeachment. From
 “ the Nature of the Crime, and the Evidence, that
 “ has been given, there can be no Hardship for
 “ want of fixing a Day on which the Treason is
 “ committed. He is charged with being concerned
 “ in a notorious Rebellion: The Time mentioned
 “ in the Impeachment is the Months of *September*,
 “ *October*, and *November*, and particularly the 9th,
 “ 10th, 11th, 12th, and 13th Days of *November*. He is
 “ charged with being concern’d from the Time he
 “ left his House, till he was taken; and all this hath
 “ been amply proved. And how can this Noble
 “ Lord suffer, because no particular Day is men-
 “ tioned, after he continued in Rebellion for so ma-
 “ ny Months and Days, and marched through so
 “ many Counties? But, my Lords, I have a Prece-
 “ dent in my Hand, *The Tryal of the Earl of Staf-*
 “ *ford*, in which Impeachment the Time was more
 “ uncertain; and yet that was never attempted to be
 “ offered in Arrest of Judgment. The Words in
 “ that Impeachment were, *That for divers Years last*
 “ *pass’d, a damnable Conspiracy had been carried on,*
 “ *&c.* And when they come to the particular
 “ Charge, all that is said, is, *That within the Time*
 “ *aforesaid, &c.* that is, some Time within divers
 “ Years last pass’d; whereas in this Impeachment
 “ there are three Months named, in which the Treason
 “ charged in the Impeachment was committed:
 “ So that here the Commons are sufficiently justify’d
 “ in the Articles exhibited by them. And I hope it
 “ will never be allowed as a Reason, that what
 “ quashes an Indictment in the Courts below, will
 “ make an Impeachment insufficient brought by the
 “ Commons of *Great Britain*.

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Att.

Att Gen. "MY Lords, we are upon an Impeachment, and not an Indictment. The Courts below have set Forms, which have prevailed for a long Course of Time, and are thereby become the Forms by which those Courts are to govern themselves; but it was never thought that their Forms had any Influence on the Proceedings of Parliament. In the Reign of *Richard II.* it is said in the Records of Parliament, *That Proceedings in Parliament are not to be governed by the Forms of Westminster-Hall.* And though it is usual in the Courts below to alledge a certain Day, yet they add [*and at divers other Days and Times;*] and that Day which is laid, is not material; for they are not bound to prove the Crime committed on that Day, but may prove the Defendant guilty at any Time, either before or after the Day laid in the Indictment.

Mr. Attorney General's Answer to the Prisoner's Counsel.
Vol. vi. p. 53.

"As to Dr. *Sacheverel's* Case, there was an Exception taken to the Impeachment for Uncertainty; and it was argued from the Forms of the Courts in *Westminster-Hall*, *That where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote, according to the Opinions of the Judges:* But it was resolved to be otherwise in the Court of Parliament; and they were not bound but by their own Forms.

"As to their Objection, *That there is no Time laid for some of the Overt-Acts*, I think there is a certain Day charged when *Preston* was seiz'd; and in the inferior Courts it is held, that it is not necessary there should be a Day and Place alledged for every Overt-Act. We think, therefore, this Objection has no Weight, especially in Case of an Impeachment. Your Lordships have already given Judgment against six upon this Impeachment: It is warranted by Precedents in Parliament. Therefore we insist that the Articles are good in Substance, and according to the Forms of Parliament."

Mr. Cowper. "IF the Commons, in preparing Articles of Impeachment, should govern themselves by Precedents of Indictments, they would depart from the antient and constant Practice

Mr. Cowper's Answer to the Prisoner's Counsel.

“ Practice of Parliament. The Form of an Impeachment has very little Resemblance to that of an Indictment; and, I believe, the Commons will endeavour to preserve the Difference, by adhering to their own Precedents.

“ They will not find one Precedent in Case of an Impeachment of High Treason, where there has been a certain Day or Time laid when the Treason was committed; and in inferior Courts, it seems to be rather Form than Substance.”

*Sir William
Thompson's An-
swer to the Pri-
soner's Counsel.*

Vol. vi p. 54.

Sir W. Thompson. “ **A**S to the Law, we must refer to the Forms of Proceedings in the Court of Parliament, which is the Law of Parliament, and Part of the Law of the Land. Your Lordships will be governed by the Forms of your own Court, as the Courts below are by theirs; which Courts differ one from the other in many Respects, as to their Forms of Proceedings; and the Practice of each Court is esteem'd the Law of that Court. My Lords, here is one of the Treasons alledged to be within the Compass of five Days, namely, the seizing of *Preston*, and engaging the King's Troops there. If his Lordship could have shewn he had been elsewhere during that Time, it might have been of Service to him: But unfortunately for him, your Lordships have found him guilty within those five Days. And if it be demanded, to what Time the Forfeiture of the Defendant's Estate shall relate; it is answered, if it be taken the most favourably for the Defendant, the Conviction shall operate so, as to make the Forfeiture only from the last of these Days; and I don't apprehend any other Inconvenience. But to infer, that for this Reason no Judgment at all shall be given upon this Conviction, where material and substantial Part of the Issue is found, seems not to be a right Consequence. For these Reasons, and what have been mention'd before this Exception, has no Weight; we hope your Lordships will over-rule it.”

L. H. Steward. Gentlemen of the House of Commons, I suppose you don't oppose the Counsel's replying to you? If you have any Thing to offer, you may be heard to it afterwards.

Att.

Att. Gen. We don't object to it, if the Commons have a Liberty of speaking afterwards, and closing; which they insist is their Right.

L. H. Steward. Gentlemen, you may reply.

Sir Const. Phipps. " I Don't remember I said the Day laid in the Indictment was material; for I never thought it so material that there was a Necessity to prove the Treason to be committed upon that very Day: But I conceive the Day laid in an Indictment ought to be very near the Time, if not upon the very Day the Treason is supposed to be committed: And I take the constant Practice to be so.

Sir Constantine Phipps's Reply to the Managers.
Vol. vi. p. 55.

" All the Gentlemen who spoke in answer to me have admitted, that in Indictments for Treason, a certain Day ought to be alledged; but the Honourable Gentleman who spoke first, makes a Difference between an Indictment and Impeachment; because an Impeachment is a Parliamentary Proceeding, and the Parliament are not tied up to such strict Forms as the Courts below. But I submit it to your Lordships Judgment, whether an Impeachment by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment by which a Commoner is to be attainted? and whether by the *Lex Parliamentaria*, as much Certainty is not required in one Case as the other? As to the Impeachment of the Lord *Stafford*, that began with an Account of the Plot in general; and in that Case a general Allegation was sufficient: But whether the particular Part which my Lord *Stafford* had in that Plot be not more certainly alledged, I cannot take it upon my Memory to say; nor is it material, for it is admitted, that no Objection was made to that Impeachment, for the Uncertainty of the Charge. If such an Objection had been made and over-rul'd, it would have been a full Answer to us; but there being no notice taken of it, our Objection is as strong, as if that Case had never happen'd. As to that Part of the Impeachment which relates to the taking of *Preston*, though that seems more certain than any other Overt-Act, yet the Words [*or about*] leave it at large, and render it uncertain.

Mr. Williams's
Reply to the
Managers.

Mr. Williams. " I Would beg Leave to observe,
" that only one Precedent has been
" cited against us, (the Impeachment of the late Lord
" *Stafford*;) and it must be submitted to your Lord-
" ships, how far one single Precedent will be a Proof
" of the Course and Custom of Parliamentary Im-
" peachments, especially when it appears that the
" Objection was not made in that Case? and whe-
" ther repeated Acts are not necessary to prove this,
" as well as other Customs? and that if this were
" *Lex & Consuetudo Parliamenti*, whether it would
" not be an easy Matter to cite many Instances of
" it? and if it be not necessary in this Case to cite
" further Precedents, inasmuch as the Lord *Staff-*
" *ford*'s Case has lost some of its Force by the latter
" Precedent of Dr. *Sacheverel*'s Case? and even
" in the Case of a Misdemeanor, a certain Day is
" laid in the Impeachment, when it is charged to
" have been committed? It has been objected by the
" learned Managers, that in Indictments it is usual-
" ly charged, that the Party committed the Treason
" *diversis diebus & viribus*; which is as uncertain
" as this Impeachment: But it must be observ'd, that
" besides these Words there is a certain Day laid
" when the Treason was committed; and the Words
" *diversis diebus & viribus* are but Surplusage, the
" Indictment would be good without them. It has
" been objected also, That if a Day certain be
" mentioned in an Impeachment, or Indictment, it
" is not material; for if the Treason be proved to
" have been committed on any other Day, the Party
" will be found Guilty: And this I admit. But
" what I humbly insist on, is, That it is the constant
" Course to mention a Day certain; and the Day
" mentioned, is usually the very Day on which the
" Treason was committed. And to know this, is of
" very great Use to the Party indicted or impeach-
" ed, and may very much assist him in his Defence.
" The mentioning a Day certain also is manifest-
" ly for the Advantage of the Crown; in regard the
" Forfeiture of the Land to the King shall relate to
" the Day laid in the Impeachment, or Indictment;
" from whence I beg Leave to infer, that the men-
" tioning a Day certain in the Impeachment is ma-
" terial; that the Omission of it renders the Im-
" peachment

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"peachment defective : And, therefore, I humbly
 "pray your Lordships to arrest the Judgment.

Att. Gen. "MY Lords, the learned Gentlemen
 "now agree, that the particular
 "Day in an Indictment is but Form ; and that the
 "Fact may be proved any Day before, or after ; con-
 "sequently the Prisoner gets or loses nothing by
 "having a Day charged or omitted. He must pro-
 "vide for his Defence, as if no Day was laid : And
 "since it is immaterial in Indictments, it must be so
 "in Impeachments. As to the Answer given to
 "my Lord *Stafford's* Case, that this Point passed
 "*sub Silentio*, if that Impeachment had not been
 "thought good, he had the Assistance of learned
 "Counsel, well able to advise him, and who cer-
 "tainly would have taken the Exception. Here is
 "no Uncertainty that can be to the Disadvantage
 "of the Prisoner : The Impeachment is agreeable
 "to the Forms of Parliament ; he has pleaded to it,
 "and your Lordships have found him guilty."

Mr. Attorney General closes the Ar-
 gument.

L. H. Steward. My Lord *Wintoun*, your Coun-
 sel have been heard : Have you any Thing else to
 offer in Arrest of Judgment ?

L. Wintoun. If you please to ask my Counsel, they
 will tell you.

L. H. Steward. You have been told often, that
 the Point you would have your Counsel speak to,
 must be stated and proposed by yourself.

L. Wintoun. Since your Lordship won't allow
 my Counsel, I don't know nothing.

[*Here the House being adjourned about three o'Clock,*
return'd again at Five.]

L. H. Steward. "GEORGE Earl of *Wintoun*, I
 "have already acquainted you,
 "that your Peers have found you guilty. Your
 "Lordship afterwards moved in Arrest of Judgment ;
 "which Motion has been disallow'd. The next
 "Step is to proceed to Judgment ; which my Office
 "obliges me to pronounce ; but I am very far from
 "taking any Satisfaction in it.

L. H. Steward's
 Speech upon pas-
 sing Sentence.

"My Lord, your Crime is the greatest known to Vol. vi. p. 57
 "the Law of this, or any other Kingdom ; and it is

The Tryal of GEORGE Earl of

“ the most odious Species of that Crime: A Conspira-
 “ racy, manifested by an open Rebellion, to depose
 “ and murder that sacred Person who sustains and
 “ is the Majesty of the Whole; in attempting whose
 “ precious Life, you strike at the most Noble Part,
 “ the Seat of Life, and Spring of all Motion in this
 “ Government: Which may properly be called a
 “ Design, not only to murder the King, but the
 “ whole Body Politick of the Kingdom.

“ Success in your Treason must infallibly have
 “ established Popery; which never fails to bring with
 “ it a Civil, as well as Ecclesiastical Tyranny; and
 “ which can never take place till the present Con-
 “ stitution is annihilated; and your Crime is the
 “ more aggravated, as it is complicated with that
 “ horrid and crying Sin of murdering many, who are
 “ not only innocent, but meritorious.

“ And if Pity be due to such as suffer for their
 “ Crimes, a much greater Share of Compassion is
 “ owing to them who have lost their Lives by the
 “ Crimes of other Men: Those who promoted the
 “ late Rebellion, have so many Murders to an-
 “ swer for, as there were Subjects killed. Your
 “ Lordship will be under a great Delusion, if you
 “ look on those who fell at *Dumblain* or *Preston*,
 “ on the Side of the Laws, and in Defence of the
 “ Government, as slain in lawful War.

“ Your Crime is made yet redder, in shedding the
 “ best Blood in the Kingdom, the brave common
 “ Soldiers, and those gallant Heroick Officers, who
 “ continued faithful to Death in Defence of the
 “ Laws: What Blood can be better than that
 “ which is shed in the Cause of the true Religion,
 “ and the Liberties of its Country?

“ Believe it, notwithstanding the unfair Arts used
 “ to stir up a pernicious Excess of Commiseration
 “ towards those who have fallen by the Sword of
 “ Justice, the Life of one Loyal Subject is more
 “ precious in the Eye of God, and all considering
 “ Men, than the Lives of many Rebels and Parricides.

“ There is this further Malignity in your Lord-
 “ ship's Offence of open Rebellion, That it is too
 “ notorious to be pass'd by unobserv'd; and a Go-
 “ vernment is reduc'd to this Dilemma, If it be
 “ not Punish'd, the State is endanger'd by giving an
 “ Example

" Example that it may be attack'd with Impunity:
 " And if it be punish'd undeserv'd, Clamours are
 " rais'd of the Cruelty of those in Power. The
 " Enemies of the Government make unseasonable
 " and unlimited Encomiums upon Mery and For-
 " giveness, which will have an Effect upon silly and
 " undistinguishing People; so that Rebels have the
 " Satisfaction of hurting the Government a little,
 " even by their Fall: But a wise Government has
 " this Consolation, after it has temper'd Justice
 " with Mercy, in such proportion as sound Discre-
 " tion directs, that such Seeds of Discontent take
 " root on very shallow Soil only; and after they
 " have made a weak Shoot, wither and come to
 " nothing.

" How confidently was it given out by the Fac-
 " tion, before your Lordship's Tryal, That the sur-
 " render at *Preston* was made on Assurances or
 " Hopes of Pardon: Whereas, it appears that Fear
 " was the only Motive to it. The evil Day was
 " deferr'd, and the Rebels rightly judg'd, that fewer
 " wou'd die by the Way they chose, than if they
 " had stood an Attack; They were aw'd by the
 " experienced Courage of the King's Troops, and
 " the superior Genius and Spirit of his Majesty's
 " Commanders, and were, in Truth, never flatter'd
 " with any other Terms than of surrendering as
 " Rebels and Traytors; their Lives were only spar'd
 " till his Majesty's Pleasure cou'd be known.

" It is a Debt due to those brave Soldiers, to
 " whom their King and Country owe more than
 " can be express'd, that their Victory shou'd be
 " vindicated from Detraction, and preserv'd unful-
 " lied by the Tongues of Rebels and their Accom-
 " plices.

" And give me Leave to observe, That this En-
 " gine of a lying Tongue, which sets the World on
 " Fire, has been of prodigious Use to the Rebels
 " and their Friends, not only since and during the
 " Rebellion, but while it was forming.

" False Facts, false Hopes, and false Charac- Vol. VI. p. 38.
 " ters, have been more than half the Scheme they set
 " out with, and yet seem to depend upon.

" It has been rightly observ'd, That your Lord-
 " ship does not so much as insist on what cou'd
 " alone excuse you, Your being forc'd into the

“ Rebellion, and remaining under that Force: And
 “ if you had, it has been clearly prov’d that your
 “ Lordship was active and forward, and so confi-
 “ derable in a Military Capacity, as to command a
 “ Squadron.

“ I shall conclude with exhorting your Lordship,
 “ That now the Time is come, when the Veil of
 “ Partiality should be taken from your Eyes: It
 “ must be so when you come to die. You shou’d
 “ think, if possible, with Clearneis and Indifference,
 “ which must produce a hearty detestation of your
 “ Crime; and as you are a Protestant, in all Pro-
 “ bability, make you a sincere Penitent; for you
 “ were engaged in an Enterprize, which, if it had
 “ succeeded, must have destroy’d your Holy Reli-
 “ gion. It only remains, that I pronounce that
 “ Sentence which the Law prescribes, and which
 “ sufficiently shews what Thoughts our Ancestors
 “ had of the Crime you are convicted, viz.

“ *That you, George Earl of Wintoun, return to
 “ the Prison of the Tower from whence you came;
 “ from thence you must be drawn to the Place of Exe-
 “ cution; when you come there you must be Hang’d
 “ by the Neck, but not till you be Dead, for you must
 “ be cut down alive; then your Bowels must be taken
 “ out, and burnt before your Face; then your Head
 “ must be sever’d from your Body, and your Body di-
 “ vided into four Quarters; and these must be at the
 “ King’s Disposal.*

And God Almighty be merciful to your Soul.

Then the Lord High Steward broke his Staff, and
 declar’d his Commission was dissolv’d; and the
 Lords adjourn’d to the House above.

The Earl of *Wintoun* remain’d a Prisoner in the
 Tower till the 4th of *August*, 1716. when he made
 his Escape, and went over into *France*.

Vol. vi. p. 52. N. B. *The Tryal of Francis Francia, a Jew, at the
 Old-Bailey, for High Treason, Jan. 22. 1716.
 2 Geo. I. being already Printed in the Abridgments,
 Vol. vi. Pag. 670. is here purposely omitted.*

PROCEEDINGS in Parliament Vol. vi. p. 102.

against ROBERT Earl of OXFORD, upon an Impeachment for High Treason, and other High Crimes and Misdemeanors. 3 Geo. I.

1717.

ON the 10th of June, 1715. Mr. *Walpole* mov'd ^{The Earl of Oxford Impeach'd, June 10. 1715.} to impeach the Lord Viscount *Bolingbroke* of High Treason, and other High Crimes and Misdemeanors: And the same Day, the Lord *Coningsby* mov'd to impeach *Robert* Earl of *Oxford* of High Treason, and other High Crimes and Misdemeanors; which Impeachments were at length resolv'd on, but not without some Opposition; for several Members thought the Evidence, produc'd against these Noble Lords, not sufficient to ground an Impeachment of High Treason upon.

On the 9th of July following, the Lord *Coningsby* carried up the Articles of Impeachment against the Earl of *Oxford* to the House of Lords, and pray'd that he might be sequestred from Parliament, and committed to close Custody. Whereupon the Lords order'd him into the Custody of the Black Rod; and on the 16th of the same Month he was committed to the *Tower*.

The Commons seem'd satisfied with the Confinement of the Earl, and did not discover any Inclination to proceed against him. But the Earl finding his Health impair'd by lying in the *Tower*, petition'd the House of Peers, in May 1717. That his Imprisonment might not be indefinite, but that he might either be brought to his Tryal, or discharg'd. Upon the reading his Petition, it was asserted by some Lords who were well acquainted with Parliamentary Proceedings, That the Impeachment was destroy'd by the Prorogation that had happen'd since the Impeachment was brought up; but upon a Division this Opinion was over-rul'd, though the Earl of *Nottingham* urg'd very strong Reasons for the Support

He Petitions the House of Peers to be Discharg'd, or Try'd.

Support of it, and afterwards enter'd his Protest. The Duke of *Buckingham* then moved to appoint a short Day for the Earl's Tryal; and the 13th of *June* being fix'd; upon the Application of the Commons, the Time was enlarg'd to the 24th, when the Lords came in the usual Order from the Chamber of Parliament to the Court erected for the Tryal at *Westminster-Hall*.

He is brought to his Tryal on the 24th June, 1717.

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The Commission having been read, constituting *William Lord Cowper* Lord Chancellor of *England*, Lord High Steward *pro hac vice*, and his Lordship being afterwards placed in his Chair on the second Step of the Throne, with the usual Ceremony, the Lieutenant of the *Tower* was order'd to bring his Prisoner, the Earl of *Oxford*, to the Bar; where the Earl kneeling, after some Time, was order'd by the Lord High Steward to rise, and then the Articles of Impeachment were read by the Clerk, entitled, *Articles of Impeachment of High Treason, and of other High Crimes and Misdemeanors, against Robert Earl of Oxford and Earl Mortimer.*

Preamble to the Articles of Impeachment.

Preamble to the Articles of Impeachment.

THE Preamble to the Article sets forth, That whereas many solemn Treaties and Alliances had been entred into between the Crown of *England* and other Powers, for their mutual Safety against the common Danger that threatened *Europe* from the immoderate Growth of the Power of *France*; And whereas, the preventing the Monarchy of *Spain* falling into the Hands of the House of *Bourbon*, had occasioned several Treaties among the Allies, particularly, the Partition Treaty, whereby a small Part only of the Dominions of *Spain* was allotted to the House of *Bourbon*, was condemn'd by Parliament as fatal to the Peace of *Europe*; And whereas the Duke of *Anjou*, Grandson to the *French* King, on the demise of *Charles II.* King of *Spain*, took Possession of the whole *Spanish* Monarchy; whereby the Balance of Power, the Protestant Religion, and the Liberties of *Europe* were endangered; and thereupon the late Emperor *Leopold*, King *William III.* and the States-General, did in the Year 1701. enter into an Alliance for procuring an equitable and reasonable Satisfaction to his Imperial Majesty, for

for his Pretension to the *Spanish* Succession; and that *Britain* and the *States* might obtain a sufficient Security for their Kingdoms, Provinces, and Dominions, and for the Navigation and Commerce of their Subjects; and did engage to assist each other with all their Forces, according to a Specification to be agreed upon in a peculiar Convention for that Purpose; and particularly, that the said Confederates, should use their utmost Endeavours to recover the *Spanish* Low Countries, that they might be a Barrier for the United Provinces against *France*; as likewise the Dutchy of *Milan* and its Dependances, as a Fief of the Empire, and contributing to the Security of his Imperial Majesty's hereditary Dominions, besides, the Kingdoms of *Naples* and *Sicily*, and the Lands and Islands on the Coast of *Tuscany*, that belong'd to *Spain*; and that the said Confederates should communicate their Designs to each other, as well in relation to the Actions of the War, as all other Things, wherein the common Cause was concern'd; and that none of the Parties should treat of Peace with the Enemy, unless jointly, and by a Communication of Councils; and that no Peace should be made, unless an equitable and reasonable Satisfaction for his Imperial Majesty; and a particular Security of the Kingdoms, Provinces, Dominions, Navigations, and Commerce for *Great Britain* and that of the *States*, should be first obtain'd; and unless Care was taken, that the Kingdoms of *France* and *Spain* should never be united under the same Government; or that one and the same Person should be King of both Kingdoms; and particularly, that the *French* should never be permitted to traffick to the *Spanish West-Indies*, directly or indirectly; nor unless the Subjects of *Great-Britain* and the *States* shou'd be permitted to enjoy all the Advantages, in point of Trade to the Dominions of *Spain*, they did at the Death of King *Charles II.* or at any Time before: And whereas a defensive Alliance was also concluded between *Great-Britain* and the *States-General* in *November 1701.* for their mutual Security; wherein it was agreed, That in case the said Allies should be jointly engag'd in War, there should be an Offensive, and Defensive, and Perpetual Alliance between them; and that when the War was begun, the Confederates should act in Concert according

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ing to the 7th and 8th Articles of the Treaty of the 3d of *March* 1672, between *England* and *Holland*, which was thereby renew'd and confirm'd; and no Truce, or Peace, or Suspension of Arms, should be negotiated but according to the 9th and 10th Articles of that Treaty, by which it was agreed, That when the two Allies were once in open War, it should be lawful for neither of them, afterwards, to come to a Cessation of Arms with the Enemy, without it were done conjointly and with common Consent; that no Negotiation of Peace should be set on foot by one of the Allies, without the Concurrence of the other; and that each Ally should impart to the other every Thing that passed in the Negotiation: And whereas the French King, by seizing the Ports of *Spain* and the *Spanish West-Indies*, did obstruct the Freedom of Navigation and Commerce, and had proclaim'd the pretended Prince of *Wales* King of *England*, &c. and influenc'd *Spain* to concur in the same Affront, the late Queen found herself oblig'd, in order to vindicate the Honour of the Crown, and prevent the Mischiefs that threatned *Europe*, to declare War against *France* and *Spain* in the Year 1702. and his Imperial Majesty, the States General, the German Princes, the Duke of *Savoy*, &c. became Confederates in the said War; and by a Treaty, enter'd into in *May* 1703. between the Emperor, the Queen of *Great-Britain*, the States-General, and the King of *Portugal*, it was stipulated, That no Truce or Peace should be made, but by the mutual Consent of all the Confederates, while any Prince of the Line of *France* continued in *Spain*; and in the Treaty of *Nordlingen*, ratified by her Majesty, it was agreed, That no particular Treaties should be made, but the Peace should be jointly treated of, and not be concluded without obtaining, as far as possible, the Reunion of the Lands belonging to the Circles, and the Security of the Associated Circles was absolutely provided for: And whereas her late Majesty, and the States, by another Treaty, in *June* 1703. confirm'd all former Treaties between them, and agreed never to make Peace, or a Cessation of Arms, but in Conjunction and by common Consent: And whereas the said War was carried on for many Years with Vigour and Unanimity, and a vast Ex-

pence

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pence of Blood and Treasure by the Allies; for the
 Support of which, many Millions were granted by
 the Parliament of *England*, who not only approv'd
 the Necessity and Justice of the War, but frequently
 gave their humble Advice to the Throne, That no
 Peace cou'd be safe, honourable, or lasting, so long
 as *Spain* and the *West-Indies* continued in Possession
 of any Branch of the House of *Bourbon*: And
 whereas it had pleas'd God to bless the Confederate
 Arms, under the Command of their Great and Vic-
 torious General, the Duke of *Marlbrough*, with un-
 parallell'd Successes, and the Glory of their Arms,
 and the Reputation of *Great-Britain* in particular,
 was rais'd to an higher Pitch than in any former Age:
 And whereas, by the Treaties with *France* in the
 Years 1709 and 1710. the Restitution of *Spain* and
 the *Indies* was laid down as a firm and immoveable
 Foundation of those Negotiations, and there re-
 main'd no question of it with the Ministers of the
 Allies, or those of *France*, but touching the Security
 for its Execution; and the Conferences being
 broken off by *France*, without giving any Satisfac-
 tion therein, her Majesty, in Conjunction with her
 Allies, renew'd their Resolutions to continue to
 push the War with Vigour, and to make all possi-
 ble Efforts, as the only Means left to force a good
 and general Peace; and the Queen, in her Speech
 of the 15th of *November*, 1709. taking Notice of the
 endeavours of the Enemy to amuse and create Jeal-
 ousies among the Allies, during the late Negotia-
 tions, express'd her Resentment thereat, and recom-
 mended the carrying on the War with Vigour, that
 she might put the last Hand to that great Work of
 reducing the exorbitant Power of *France*: And
 whereas God was pleas'd afterwards to bless the
 Confederate Arms, under that consummate General
 the Duke of *Marlbrough*, with new and signal Con-
 quests, the Reduction of *Tournay*, the Victory of
Bloreignies, or *Malplaquet*, the taking of *Mons*, *Do-*
way, *Bethune*, *St. Venant*, and *Aire*, and the pene-
 trating the *French* Lines; and from the prosperous
 Condition of the Allies, there remain'd nothing in
 Appearance that cou'd prevent their reaping the Fruits
 of all their Victories in a speedy and honourable
 Peace, but the Disunion of the Confederacy: And
 whereas the said Earl, with other evil-dispos'd Per-
 sons,

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sions, Enemies to their own Country and the common Liberties of *Europe*, having by wicked Arts insinuated themselves into the Favour of the late Queen, and procur'd themselves Admission into her Council, and into Places of the highest Trust, and prevail'd on her to dissolve the Parliament that had express'd a true Zeal for the common Cause : And whereas the said Earl and his Accomplices had form'd a treacherous Correspondence with the Emis-saries of *France*, who transmitted from *France* to *England*, certain Propositions sign'd by Monsieur de *Torcy*, Secretary to the French King, in *April* 1711. to be the Basis of a Treaty of General Peace ; and her Majesty having been prevail'd on by the said Earl, to renew the same, she afterwards communicated them to the Ministers of *Holland*, declaring, That she was resolv'd in making Peace, as well as War, to act in perfect Concert with the States ; and the Grand Pensionary and other Ministers of the States thereupon answer'd, That they desir'd equally with *Britain*, to have a general and lasting Peace ; and declar'd they were ready to join with her Majesty in all proper Measures to procure it ; but desir'd that *France* would explain herself more particularly upon the Points therein contain'd, and impart the Plan to the Allies ; after which a more particular Negotiation might be enter'd into : Notwithstanding all which premises,

The Articles of
Impeachment.

I. He, the said Earl, having no Regard to the Honour or Safety of her late Majesty, or her Kingdoms, or the many Solemn Engagements she was then under to her old Allies, or to the common Liberties of *Europe*, but being devoted to the French King the common Enemy, although he was then Lord Treasurer, and a Privy Counsellor, in breach of his Oath, and in Defiance of the several Treaties made with the Allies, the frequent Advices of Parliament, and the Declarations of her Majesty from the Throne, and particularly in Defiance of a late Treaty to act in Concert with the States, did, in the Months of *July* or *August* 1711. maliciously form a treacherous Confederacy with other evil-dispos'd Persons of her Majesty's Privy Council, to make a separate and destructive Peace between *Great Britain* and *France*, without communicating
same

the same to her Allies; and did advise her Majesty to send *Matthew Prior* Esq; to *France*, to make Propositions of Peace; who accordingly went thither in the Months of *July* or *August* 1711. in a clandestine Manner, and did communicate the said Propositions to the Ministers of *France*; in which the particular Interests of *Britain*, and the common Interest of *Europe* were betray'd, and an express Article inserted in the said Propositions, That the Secret should be inviolably kept from the Allies: By which the said Earl set on foot a Negotiation of Peace more advantageous to *France* than She had ask'd the preceeding Month of *April*, and thereby put it in the Power of *France* to create Jealousies between her Majesty and her Allies, destroying that Confidence which had so long subsisted between them.

II. And whereas the French King, laying hold of the said treacherous Overture, did, in or about the Months of *August* or *September* 1711. send over Monsieur *Mesnager* into *England*, to carry on a clandestine and separate Negotiation of Peace; and the said Earl did afterwards, in the said Month of *September* 1711. secretly, and without Authority, treat with the said *Mesnager* of a Peace between *Britain* and *France*, and in such Negotiations did promote the making a separate Treaty between the said Crowns; which Treaty was afterwards, with the Privy of the said Earl, sign'd by the said *Mesnager* on the Part of *France*, and by the Earl of *Dartmouth* and *Henry St. John* Esq; two of her Majesty's Secretaries of State, in behalf of her late Majesty, by virtue only of her Sign-Manual under the Signet, and without the Knowledge of her Allies, in which Treaty the Interests of *Britain* were given up to *France*, and the Duke of *Anjou* admitted King of *Spain*; whereby the said Earl did not only assume Regal Power, in treating with the Enemy without Authority from her Majesty, but did what in him lay to subvert the antient Constitution, by introducing illegal Methods of transacting the most important Affairs of State, and by the said separate Treaty did what in him lay to dissolve the many solemn Treaties her Majesty stood engaged in to her Allies, whereby he brought her to this Dilemma, either to submit

to

to the Dictates of *France*, or lose the Confidence of her Allies.

III. And the said Earl, the better to carry on the said Treaty, did, with others then in high Trust, contrive a Set of General Preliminaries to be sign'd by the *Sieur Mesnager* only, and advised her Majesty to communicate the same to the Ministers of the Allies then in *England*, as the Ground of a General Peace, (while the Treaty sign'd, as aforesaid, by the Earl of *Dartmouth* and Mr. *St. John* on the Part of *England*, and by the said *Mesnager* on the Part of *France*, was, by the Advice of the said Earl of *Oxford*, and others, wilfully concealed, not only from the Allies, but even from her Majesty's Council and Parliament;) and did also advise her Majesty, not only to accept the said Preliminaries, but to communicate them to the States, as a sufficient Foundation to open the Conferences of Peace with *France*: And the better to cover his Designs from the States, caus'd certain Instructions to be signed by her Majesty, and delivered to the Earl of *Siraford*, her Ambassador to the States, wherein he was directed to represent to the Pensionary of *Holland*, and other Ministers of the States, that when her Majesty, in *May* last, by his Excellency's Dispatches, received an Account of the Sense which those among them, who were at that Time in the Secret, had of the Overtures made by *France*, for setting a Negotiation of Peace again on Foot, and of the Answer which it was desir'd might be return'd to the Propositions, sign'd by *Monsieur de Torcy*, she immediately acquainted the Enemy, that their Offers were thought by her and the States-General neither particular, nor full enough, and therefore she did insist, that they should form a distinct Project of such a Peace as they were willing to conclude: Whereas no such Instances had been made to the Enemy; but, on the contrary, notwithstanding her Majesty had declared that the Propositions of *Torcy* were neither particular, nor full enough, yet without any farther Explication from the Enemy, she was prevailed on, in manner aforesaid, to send over Propositions to *France* in all Respects as destructive to the Interests of *Britain* and her Allies, as those of *Torcy*; and in the Particulars aforesaid, as well as in several others, the said Instructions contain'd Matters, either false, or grossly

grossly prevaricating and evasive ; by which wicked Counsels of the said Earl of *Oxford*, that unquestionable Truth, which, by the Laws of Nations, ought to accompany the Instructions of Ambassadors to Princes in Confederacy against the Common Enemy, was vilely prostituted to deceive her Majesty's Allies, in Matters of the greatest Importance to their own Interests, and the Interests of these Kingdoms ; the Honour of her Majesty's Person, and the Crown of these Realms, were scandalously betray'd ; and the Royal Hand, by the wicked Arts of the said Earl, made the Instrument to advance the Interest of the Common Enemy.

IV. And whereas the Earl of *Strafford* had communicated the Preliminaries sign'd by Monsieur *Mefnager* only to the States General, who were alarmed at the pressing Instances made by her Majesty, that Conferences should be opened on Propositions as general as those so lately offer'd by *France*, and sign'd by *Torcy* ; and their High Mightinesses having been unsuccessful in their Remonstrances to the Earl of *Strafford*, against opening the Conferences, did send over Monsieur *Buys*, their Ambassador, to represent to her Majesty, as well the Hazard of Meeting the Ministers of *France*, before the Essential Articles were settled by special Preliminaries, or at least explain'd by *France*, and made specifick ; as likewise the Advantages arising to the Enemy thereby ; the said Representations were, by the evil Influence of the said Earl and his Accomplices, render'd ineffectual. And, in order to prevail upon the States to open the Conferences upon the said General Preliminaries, an Occasion was taken, by the Contrivance of the said Earl, of declaring before the said *Buys*, her Majesty's Affection and good Disposition towards the States, and her Desire to treat with them, with perfect Confidence and Harmony : And the said Earl of *Oxford* did also declare, or cause to be declared in her Majesty's Name, that she had made no separate Treaty with *France*, nor would make any before she had comply'd with all Engagements to her Allies, and given them an Opportunity of making good their Pretensions. By which false Assurances the said Earl of *Oxford* did dishonour her Majesty, by whose Privy the said separate Treaty with *France* had been

sign'd; the States, her Allies, were grossly abused, and induced thereby to enter into that fatal Negotiation with *France*.

V. That her Majesty having constituted *John* Lord Bishop of *Bristol*, and the Earl of *Strafford*, her Plenipotentiaries, to treat with the Plenipotentiaries of the Allies, and those of *France*, of a General Peace, agreeable to the reasonable Demands of all Parties, he, the said Earl of *Oxford*, not content with abusing the Royal Authority, to the Delusion of the States-General, but intending the universal Prejudice of his Imperial Majesty, and the rest of her Allies, and thereby the more successfully to carry on the Measures of *France*, caused Instructions to be prepared for her Majesty's said Plenipotentiaries, to the Effect following, viz. That they should insist that the Security which the Allies expected, and the *French* King had promised, could not be obtained, if *Spain* and the *West-Indies* be allotted to the House of *Bourbon*; whereas the said Earl had at that Time privately agreed with *France*, that *Spain* and the *West-Indies* should remain to the House of *Bourbon*, and prevailed with her Majesty to be a Party to the said private Treaty: And they were further instructed, that in case the Enemy should object that the second Article, sign'd by *Mesnager*, imply'd, That *Spain* should be allotted to the Duke of *Anjou*, they should insist that these Articles were binding only to *France*, and not to the Allies; whereby the said Earl of *Oxford* entered into a Confederacy with the Enemy, and procured her Majesty's Consent thereto, to impose upon the Allies, and conceal the said separate Treaty that had been agreed on between *Britain* and *France*; and by these, and many other Particulars contained in the said Instructions, had brought a lasting Reproach on this Crown, and grossly violated the Treaties her Majesty was engaged in with her Allies, to act in Concert with them in all Treaties of Peace.

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VI. That the Conferences of Peace being opened upon the mutual and most solemn Engagements amongst the Allies, not only to act in Confidence with each other, but to promote their Common Interest; and a specifick Explanation of the General Preliminaries having been given by the Enemy at *Utrecht*, whereon the Allies delivered their respective

rive Demands ; by the Artifices of *France*, and the secret Encouragment of the Ministers of *Britain*, the Progress of the said Negotiation was kept in Suspence, under the Pretence of the Enemy's refusing to give their Answer in Writing. During which Time the said Earl again assuming to himself Regal Power to treat of Peace with *France*, which was then delegated to the Plenipotentiaries at *Utrecht*, contrary to the Laws of this Kingdom, in Violation of the Alliances her Majesty stood engaged in, &c. was not only wanting in his Duty to her Majesty, in not preventing any further private Negotiations with *France*, but did, with others his Accomplices, advise and promote a separate Negotiation of Peace directly from *England* to *France*, without any Communication thereof to her Allies ; and therein did concert with the Ministers of the Enemy Terms of Peace prejudicial to the Interest of her Majesty, and of all her Allies ; whereby the good Effects of the said General Negotiations were defeated.

VII. That her Majesty having been prevail'd on by the said Earl to accept of a Treaty with *France*, on the Supposition that *Spain* should continue in the Possession of the House of *Bourbon*, he, the said Earl, having nothing in View but the aggrandizing the Common Enemy, yet intending to cover his Iniquity under false Appearances, did wickedly carry on a private Negotiation with *France*, on the Subject of the Duke of *Anjou's* Renunciation of his Right to the Kingdom of *France* ; and that such Renunciation should be the Security against the Reunion of the two Kingdoms : And by his evil Counsels her Majesty was prevailed on to conclude a Peace with *France* ; although the said Earl knew that a Memorial had, during the said separate Negotiation, been transmitted by Monsieur de *Torcy*, Minister to the *French* King, to one of her Majesty's Secretaries of State, whereby it was declared, that the Renunciation would be invalid by the Laws of *France*. By which false Counsels the said Earl abused the Influence which he had obtain'd with her Majesty, so far as to engage her to become Party with *France* in so fatal a Deceit.

VIII. That her Majesty having, on the 7th Day of *December*, 1711. recommended it from the Throne, that Provision might be made for an early

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ing the Duty of his Allegiance, did, in or about the Months of *September*, or *October*, 1712. traiterously assist and adhere to the French King, then an Enemy to her late Majesty, and did advise the said Enemy in what Manner the said Town and Fortrefs of *Tournay* might be gain'd from the States to the French King, contrary to the Duty of his Allegiance and the Laws of this Realm.

XII. That whereas her late Majesty had, at a vast Expence of Blood and Treasure, and on the Advices of her Parliament, prosecuted a vigorous War against the Duke of *Anjou*, which in the Years 1710, 1711, and 1712, was carried on against the said Duke and his Subjects, who then remain'd Enemies to her Majesty, he, the said Earl, did at several Times, in the said Years, traiterously assist and adhere to the said Duke of *Anjou*, and with other Evil-disposed Persons, did promote the yeilding up *Spain* and the *West-Indies*, or some Part thereof, to the said Duke of *Anjou*, then in Enmity with her Majesty, against the Duty of his Allegiance and the Laws of this Realm.

XIII. That whereas her late Majesty did, on the first opening the Conferences, declare to both Houses, on the 7th of *December*, 1711. That she wou'd endeavour, that after so long a War, the Nation might find their Interest in Trade improv'd by a Peace; and on the 6th of *June*, 1712. did declare, That the Terms of Peace obtain'd for her Subjects were such, as she had Reason to expect wou'd make them some Amends for the great Burden they lay under during the late War; and after the conclusion of the Peace, did declare, on the 9th of *April*, 1713. That the Advantages she had obtain'd for her Subjects had occasion'd great Delays in the Treaty; whereupon both Houses did, from Time to Time, exprefs their Acknowledgments to her Majesty, for her great Concern for the Welfare of her People; and whereas, at the setting on foot the said separate and pernicious Negotiation, between the Ministers of *Great Britain* and *France*, it was laid down as a Principle on the Part of *Britain* never to be departed from, That *France* should consent to adjust the Interests of *Britain*, in the first Place, that the Ministers of *Great-Britain* might be thereby enabled to engage the Queen to make the Conclusion of the general

general Peace easy to *France*; and on this pretence, it was insisted on, by the Ministers of *Britain*, to remit the Discussion of the Interests of the Allies to general Conferences; and during the said separate Negotiation, all imaginable Concessions were not only made by the Ministers of *Britain*, for the Interests of *France* against the Allies, but all Measures were enter'd into between them, that even the Ministers of *France* cou'd dictate, in order to strengthen their Hands, and enable them to impose the Terms of a general Peace; he, the said Earl, in Consult with *France*, to the Destruction of his Country, and the sacrificing the Commerce of *Britain*, did advise her Majesty, that in the Proposition sent by Mr. *Prior* to *France*, and also in the said separate Treaty, sign'd on the 27th of *September*, 1711. wherein the preliminary Demands for *Britain* more particularly were intended to be adjusted with *France*, That the Demand for *Britain*, in Point of Commerce, should not only be made in insufficient Terms, but that the Liberty of Fishing, and drying of Fish on *Newfoundland*, should be expressly given up to *France*; and did artfully contrive, with the Ministers of *France*, to keep in Suspence all Matters that concern'd the said Commerce, until, by his said wicked Counsels, *France* was become Master of the Negotiations; and the Ministers of *France*, afterwards disputing the most essential Articles which had been in Agitation, and in particular that Principle of Treating and being Treated as *Gens Amicissima*, and endeavouring to elude what had been agreed on in the said private Negotiation, for the suppos'd Advantage of *Britain*; he, the said Earl, under Pretence of removing a Difficulty then depending by an Expedient advantageous to *Britain*, did advise the 9th Article of the Treaty of Commerce with *France*; which was afterwards rejected by the Commons as prejudicial to the Commerce of these Kingdoms; but yet, for the sake of gaining that destructive Article for *Britain*, he, the said Earl, in Defiance of an Act of Parliament, and in Contempt of the earnest Representations of the Merchants, and of the Commissioners for Trade and Plantations, did advise her Majesty finally to agree with *France*, that the Subjects of *France* shou'd have Liberty of Fishing and drying Fish on *Newfoundland*;

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and did also advise her to make a Cession to *France* of the Isle of *Cape-Breton*, with Liberty to fortify the same, although Her Majesty had declared, That *France* had consented to make an absolute Cession of *Nova Scotia*, or *Arcadia*, whereof *Cape-Breton* is Part; whereas the only Advantages in Trade, pretended to be stipulated for *Britain*, were to depend on certain Conditions to be made good by Act of Parliament. By means of which Counsels, the Intentions of her Majesty, to have obtained Advantageous Terms of Commerce, were frustrated, the Trade and Manufactures of *Britain* render'd precarious, and that beneficial Branch of Trade, always esteem'd the Support of the Naval Power, and the chief Nursery of the Seamen of *Britain*, yielded up to *France*; and the only Pretence for the Violation of Treaties, the adjusting first the Interests of *Britain*, terminated at last in the Sacrifice of her Commerce to *France*, without the least Shadow of Advantage in Trade procured for these Kingdoms.

XIV. That he, the said Earl, did, with other evil Counsellors, even without any Application from the Duke of *Savoy*, and after the French King had, in the said private Negotiations, consented that the Kingdom of *Sicily* should remain to the House of *Austria*, form a Project to dispose of the Kingdom of *Sicily* to the Duke of *Savoy*, from the House of *Austria*: And a Treaty of Peace being afterwards made between the French King, his Royal Highness, and the Duke of *Anjou*, wherein a Cession is made to his Royal Highness of the said Kingdom, without any Concurrence of his Imperial Majesty; he, the said Earl, did basely advise her Majesty to assist his Royal Highness against the Emperor, then in Alliance with her, with a part of her Fleet, in order to put him in Possession of *Sicily*; whereby the greatest Injustice was done to his Imperial Majesty, in direct Violation of the Grand Alliance, and contrary to her Majesty's Declarations from the Throne, and her Instructions to her Plenipotentiaries; whereby National Faith, and the Honour of the Crown, was vilely betray'd, and the Naval Power of these Kingdoms employ'd against her faithful Allies.

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XV. That whereas, by the ancient Laws of this Kingdom, it is incumbent on the great Officers of State, to maintain, as far as in them lies, the Sacredness

credness of the Royal Word, it being apparent, that the greatest Dishonour to the Throne, and the greatest Danger to these Kingdoms must ensue, whenever that Fountain of Truth, by wicked Counsels, shall be corrupted, and thereby lose its just Influence and Authority ; And whereas, in making Peace and War, the Sovereigns of this Realm have in all Ages taken the Advice of Parliament, and her late Majesty declar'd from the Throne her Intentions to communicate the Terms of Peace to her Parliament, he the said Earl, then Lord High Treasurer, having taken on himself, throughout the said Negotiations, a most arbitrary Authority, and the Chief Direction of her Majesty's Councils, wickedly designing to prostitute the Honour of the Crown, and the Dignity of Parliaments, and not only totally to deprive her Majesty of the Advice of her Parliament in so great a Conjunction, but by misrepresenting the most essential Parts of the Negotiations of Peace, to obtain the Sanction of Parliament to his traiterous Proceedings, and thereby to deceive her Majesty, her Allies, her Parliament, and her People ; he, the said Earl, together with other evil Counsellors, did prepare several Speeches and Declarations to be made by her Majesty to her Parliament on the Subject of Peace, and did advise her to make the same to her Parliament, and particularly, by Means of his false Counsels, she did, on the 7th of December, 1711. declare from the Throne, *That notwithstanding the Arts of those who delighted in War, both Place and Time were appointed for opening the Treaty of a general Peace ; That our Allies, especially the States-General, whose Interest she look'd upon as inseparable from her own, had by their ready Concurrence express'd their Confidence in her ;* whereas, it was then notorious that the Allies of her Majesty, and particularly the States-General, then had, in the most pressing Manner, represented not only to her Majesty's Ministers in Holland, but afterwards by a Minister of their own directly to her, the Insecurity to the common Cause, by entering into general Negotiations with France on the Propositions sign'd by Monsieur Mesnager, and also their Opinion of the Consequences that might ensue thereon ; and although they had great Apprehensions concerning the Method of opening the

the Conferences, and the Consequences that might happen thereupon; yet being wrought on by the Menaces us'd by her Majesty's Ministers, and relying on her solemn Declarations to support the Interest of their State, and to act in perfect Confidence with them, they did at last, with Reluctance, consent to enter upon a general Negotiation of Peace with *France*: And, in the same Speech, her Majesty was prevail'd on, by the evil Counsels of the said Earl and others, to declare in the Words, or to the Effect following, *That the Princes and States, that have been engag'd with us in this War, being by Treaties entitled to have their several Interests secured at a Peace, I will not only do my Utmost to procure every one of them all reasonable Satisfaction, but I shall unite with them in the strictest Engagements for continuing the Alliance, in order to render the general Peace secure and lasting; and in her Message, of the 17th of January following, she again expresses the Care she intended to take of all her Allies, and of the strict Union in which she propos'd to join with them; whereas, by the evil Influence of the said Earl, her Majesty was not only induced to enter into a private Negotiation with France, exclusive of her Allies, but the same was in like Manner carried on by him, the said Earl, and others; and the Interests which the Allies were entitled to by their Treaties, especially of his Imperial Majesty, were, by the wicked Practices of him, the said Earl, and others, given up to France, and no Engagements were obtain'd for continuing the Alliance, in order to render the general Peace secure. And her Majesty having express'd her Resolutions never to make Peace with France and Spain, so long as Spain and the West-Indies remain'd in the House of Bourbon; she was prevail'd upon, by the like Advice, to declare herself, in Answer to an Address of the House of Peers, the 11th of December, 1711. to the Effect following, viz. I shou'd be sorry any one cou'd think I won'd not do my Utmost to recover Spain and the Indies from the House of Bourbon; whereas it is manifest, that the leaving the Kingdom of Spain and the Indies in the House of Bourbon, was the Foundation of the separate Treaty between Britain and France, which had been, before that Time, sign'd even with her Majesty's*

jeſty's Conſent. And her Maſteſty having frequently declar'd, That her Reſolutions, in entering into the ſaid Negotiations, were to obtain a good and laſting Peace, and the Plenipotentiaries at *Utrecht* being inſtructed to treat with *France* to that End, he, the ſaid Earl, in order to remove the Suſpicions which had been conceived of his private Negotiations with *France*, did adviſe her Maſteſty to make this further Declaration in her ſaid Meſſage of the 17th of *January*; *That the World will now ſee how groundleſs thoſe Reports are, which have been ſpread abroad by Men of evil Intentions, to ſerve the worſt Deſigns; as if a ſeparate Peace had been treated, for which there has not been the leaſt Colour given; whereas a ſeparate Negotiation had been carried on for five Months together between Britain and France; and during that Time private Propoſitions had been ſent from England, and a private Treaty with a Miniſter of France ſign'd even by her Maſteſty's Privy, excluſive of all the Allies, before the ſaid Declaration was made; and private Meaſures were thenceforth carried on by the ſaid Earl and his Accomplices, on behalf of her Maſteſty, with the Miniſters of France, even to the Concluſion of the Peace. Her Maſteſty was further prevail'd on, by the wicked Advice of the ſaid Earl, in her Speech of June the 6th, 1712, to declare, That to prevent the Union of the two Crowns, ſhe wou'd not be content with what was Speculative, but inſiſt upon ſomething Solid; and in the ſame Speech, to the Effect following, The Nature of the Propoſal for a Renunciation is ſuch, that it executes itſelf, and France and Spain are thereby more effectually divided than ever; whereas the Miniſters of France had before that Time aſſur'd the Miniſters of her Maſteſty, That to accept of the Expedient propos'd on her behalf, wou'd be to build on a Sandy Foundation; and that the Renunciation wou'd be void by the Laws of France; and that they wou'd deceive themſelves, who accepted it as an Expedient to prevent the Union of the two Crowns; and not only in the Particulars before mentioned, but in many others contain'd in the ſaid Speeches and Meſſages, the moſt eſſential Points relating to Peace and Commerce, and which concern'd the Intereſt, as well of the Allies, as of Britain, were miſrepreſented.*

By

By all which wicked evil Counsels, he, the said Earl, did scandalously abuse the Favour of his Royal Mistress, and, by means of her Authority, did mislead her Parliament into groundless Resolutions ; and thereby obtain'd the Approbation of Parliament to his dangerous Practices, and expos'd her and her People to the Contempt of the Common Enemy.

XVI. That whereas the said Earl having on all Occasions us'd his utmost Endeavours to subvert the antient Constitution of Parliaments ; and being wickedly determin'd, at one Blow, to destroy the Freedom of the House of Lords ; and intending to disguise his mischievous Purposes under a pretended Zeal for the Prerogative of the Crown, did, on or about the Months of *December*, or *January*, 1711. whilst the House of Lords were under an Adjournment, and had reason to expect, that on their next Meeting Matters of the highest Importance would be communicated to them from the Throne, they having a few Days before given their Opinion to her Majesty, *That no Peace could be safe or honourable to Britain or Europe, if Spain and the West-Indies were to be allotted to any Branch of the House of Bourbon*, contrary to his Duty and Oath, and in Violation of the Trust reposed in him, and with a Purpose to render ineffectual the Representations of her Majesty's Allies against the said Negotiations of Peace, as well as to prevent the good Effects of the Advice of the House of Lords ; and in order to obtain such further Resolutions of that House on the Subject of Peace, as might promote his secret Proceedings, did advise her Majesty to create twelve Peers of this Realm, and Lords of Parliament ; and did also advise her Majesty to call them to Parliament ; and they took their Seats in the House of Lords, on or about the 2d of *January*, 1711. to which Day the House then stood adjourn'd ; whereby the said Earl did highly abuse the Influence he then had with her Majesty, and prevail'd on her to exercise, in the most dangerous Manner, that undoubted Prerogative which the Laws of this Kingdom hath entrusted with the Crown for rewarding distinguish'd Merit ; by which desperate Advice he did wickedly pervert the true End of that Prerogative, to the Dishonour of the Crown, and the subverting the Constitution of Parliaments : All which Crimes were committed by
by

by the said Earl against our late Sovereign Lady the Queen, the Peace of this Kingdom, and in Breach of the Trusts reposed in him, he being then Lord High Treasurer, and one of her Majesty's Privy Council: For which Matters and Things, the Knights, Citizens, and Burgesses in Parliament Assembled, do, in the Name of themselves, and of all the Commons of *Great Britain*, impeach the said Earl of High Treason, and other High Crimes and Misdemeanours, in the said Articles contain'd. And the said Commons saving to themselves the Liberty of exhibiting any other Accusations or Impeachments against the said Earl, and also of replying to the Answers which the said Earl shall make, do pray that he may be put to answer all and every the Premises; and that such Proceedings may be upon them, and every of them, had, as shall be agreeable to Law and Justice.

*Additional Articles of High Crimes and Misdemeanors,
against the said Earl.*

I. **T**HAT whereas, about the Month of *January*, 1711, a destructive Expedition was set on Foot, under Pretence of conquering the Possessions of the *French King in North America*; but with a real Design to promote his Interests, by weakening the Armies of the Allies in *Flanders*, and dissipating the Naval Forces of this Kingdom, as well as for the sake of the private Gain, and corrupt Interests of the Promoters of it; he, the said Earl was not only wanting in his Duty, by industriously absenting himself from the Meeting, where that Expedition was concerted, and by not advising her Majesty against it, but did advise her Majesty to consent to an Expedition for the conquering *Canada*, and the City of *Quebeck*, on the River of *St. Lawrence in North America*; and did advise her Majesty to detach several Battalions then in the Service of her Majesty and her Allies in *Flanders*, and send the same with a large Squadron of Men of War on that Enterprize, tho' he knew the same had been a little before debated in Council, and laid aside as dangerous and impracticable: And a Demand being made at the Treasury in *May*, or *June*, 1711. for 28000 *l.* on Pretence of Arms and Merchandize, said to be sent on the said Expedition.

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Expedition, he, the said Earl, though he knew it to be an unjust and exorbitant Demand, did advise the paying of the said Sum, and counterfign'd a Warrant for the Payment of the same; pursuant to which, the same was issued and received. And after the said Expedition had proved unsuccessful, and he had discovered that the Nation had been cheated of above 20000 *l.* on that Account, did employ his wicked Arts, and the Credit he had gain'd by his false and crafty Insinuations and Practices, to keep the House of Commons from examining that Affair; of which he had boasted in a Letter to her late Majesty, thereby vainly, but most wickedly recommending himself to the Continuance of her Majesty's Favour, by the Success of those profligate Measures: By all which Practices, the Allies were deprived of the Aid of her Majesty's Troops, to the apparent Advantage of the Common Enemy, the publick Money appropriated by Parliament was misapply'd, and a heavy Debt incurred on the Nation.

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II. That the said Earl, not content with the Profit of the great Places he enjoy'd, about the Month of *October*, 1711. when the Nation was engaged in an expensive War, exhausted by Taxes, and under such a Load of Debts, as it was almost impossible to satisfy, he did advise her Majesty to sign a Warrant to himself, then Lord Treasurer, for the Payment of 13,000 *l.* to *John Drummond Esq;* for such special Services relating to the War, as her Majesty had directed; and, about the 24th of *November* following, did sign a Warrant for the Payment of 13,000 *l.* for such special Services of the War as her Majesty had directed, although no such special Services were directed by her Majesty, to which the said Moneys were to be apply'd; but the said Moneys were disposed of to his own private Use and Advantage: And, about the 14th of *December*, 1713. to cover his said scandalous Embezzlement, did prevail on her Majesty to sign a Warrant, in which his own great Services were recited; and declaring that her Majesty, in Consideration thereof, had determined to bestow on him the said Sum of Money; and, accordingly, the said *John Drummond* was directed to assign the whole Right and Benefit thereof to the said Earl, although he had clandestinely procured from the said

Drummond an Assignment of the said Moneys, near two Years before the said Warrant, and fraudulently converted it to his own Use.

III. That the said Earl, about the Months of *July* or *August*, 1712. sent *Matthew Prior*, his Instru-
ment, or Creature, into *France*, for carrying on his
seperate Negotiations; and, in the Month of *Novem-
ber* following, did prevail with her Majesty to make
him her Plenipotentiary to that Court; and did
corruptly and scandalously combine with the said
Matthew Prior to defraud her Majesty of great Sums
of Money, under Colour of the said Employment;
giving the said *Prior* an unlimited Credit to draw
upon him the said Earl, who was then Lord Treas-
urer, during his Residence in *France*; and that the
said *Matthew Prior*, between the 27th of *August*,
1712. and the 10th of *July*, 1714. did, at several
Times, draw Bills of Exchange to the Amount of
12,360 *l.* which the said Earl did prevail with her
Majesty to sign Warrants for the Payment of; and
did countersign the same, although the same exceed-
ed the Allowance of an Ambassador of *Great Bri-
tain*. And that the said Earl, in the Years 1712,
1713, and 1714. did prevail with her Majesty to sign
Warrants, that were countersign'd by him, for the
Payment of 5560 *l.* to the Use of *Thomas Harley*
Esq; a near Relation and Emissary of the said Earl's.
And did illegally and corruptly issue divers other
Sums out of her Majesty's Treasury to other Persons;
by which he had introduced a Practice highly preju-
dicial to the Constitution.

IV. And whereas the Revenues of the Crown, a-
rising from the hereditary Excise, and Post-Office,
were, by Letters Pattents of the late King *James II.*
charged with certain Annuities, or yearly Sums, for
the Use of *Mary*, the Consort of the said King *James*; Vol. vi. p. 119.
but the said Revenues were afterwards, by several
A&ts of Parliament, settled for the Support of the
Royal Household, or other Publick Uses; and
whereas by an A&t of 12 *Anne*, 500,000 *l.* was
granted to her said late Majesty, and appropriated to
the Payment of her Debts; and whereas by an A&t
of 13 *Will. III.* it was made High Treason to cor-
respond with the Pretender, or remit any Money
for his Use, he, the said Earl, having by means of
the said *Matthew Prior*, held a Correspondence with
the

the said *Mary*, Consort to the late King *James*, and being determined secretly to promote the Interest of the Pretender ; and the said Consort having empowered the Abbot *Gualtier* (a Popish Priest and Emissary, employ'd between the late Ministers and *France*, in transacting the most secret Affairs relating to the Pretender.) to concert with the said Earl the settling the Payment and Remittance of a very great yearly Sum, out of her Majesty's Treasure into *France*, under Pretence of the said Letters Patents ; and the said Earl, having held frequent Conferences with the said Abbot *Gualtier* on the Subject aforesaid, and by his evil Counsels sacrificed to *France* the Common Interests of *Europe*, and resolv'd, that the first Fruits of the Peace with *France* shou'd be an Offering by his Procurement to the most avow'd Adherent of the Pretender ; did, soon after the Conclusion of the Peace, undertake to procure the Payment of the yearly Sum of 47,000*l.* and upwards, to the use of the said Consort, during her Life ; and did, on or about the 23d of *December*, 1713. advise her Majesty to sign a Warrant to himself (reciting the said Grant of the late King *James*) for Payment thereof. And did afterwards, on the 24th of *December*, sign a Warrant to the Auditor of the Receipt of the *Exchequer*, requiring him to pass Debentures for paying one Quarter of the said Annuity, viz. from *Lady-Day*, 1713. to *Midsummer* following, appointing the same to be paid out of the said Sum of 500,000 *l.* appropriated to the Payment of her Majesty's Debts ; and the said Earl, then Lord Treasurer, did also advise her Majesty to sign another Warrant, directing the Payment of 1000 *l.* to *Daniel Arthur* Esq; for Moneys expended by him for her Majesty's special Service ; and the same being received by the said *Arthur*, out of her Majesty's Treasure, the said Earl, then Lord Treasurer, did give private Directions to the said *Arthur* to pay the said Sum of 1000 *l.* to the said *Gualtier*, or to his Use ; and it was paid to the Abbot *Gualtier* accordingly.

V. That whereas by the Laws of this Kingdom, no Subject of this Realm having committed High Treason, ought to be received as a publick Minister here from any foreign Prince ; and whereas in the

the Year 1713. one *Patrick Lilesh*, usually known by the Name of *Sir Patrick Lawless*, an *Irish* Papist, who had serv'd in Arms against King *William* and her late Majesty, did come into this Kingdom, and take upon him the Character of a Minister sent from *Philip* King of *Spain* to her late Majesty; the said Earl, who then assum'd to himself the supreme Direction of her Majesty's Councils, was not only wanting in his Duty, in not advising her Majesty against receiving the said *Lawless* in the Quality aforesaid, but did, together with other evil Counsellors, advise her to admit him as a Minister from his said Catholick Majesty; and the said Earl did often meet and negotiate the most important Affairs of the Nation with the said *Lawless*; and, the better to disguise and conceal his dangerous Measures, did advise that the said *Lawless* should be introduc'd to her Majesty under the false Name of *Don Carlo Moro*; and the House of Lords having Notice, in April 1714. of the said dangerous Attempt of the said *Lawless*, did address her Majesty to issue her Proclamation, commanding all Magistrates to search for Popish Priests, and put the Laws in Execution against them, as likewise to apprehend all such Persons as had born Arms against King *William*, or her late Majesty; and a Proclamation was issued accordingly; and the House of Lords resolved, *That no Person being a natural-born Subject, who had serv'd against her Majesty, ought to be received as a publick Minister*; yet the said Earl, not regarding the Safety of her Majesty, or the Protestant Succession, or the Resolution of the Lords, &c. instead of causing the said *Lawless* to be apprehended, did, about the 15th of *March*, 1714. advise her Majesty to sign a Warrant, directing the Payment of 1000*l.* to *Daniel Arthur* Esq; for special Services; and the said Earl afterwards directed *Arthur* to pay it to the said *Lawless*; who received it accordingly; and the said Earl did, at other Times, in a fictitious and scandalous Manner, direct the Payment of other considerable Sums to the said *Patrick Lawless* out of her Majesty's Treasure: And by thus countenancing the secret Emissaries of the Pretender, did greatly encourage his open Adherents to the apparent Danger of the Protestant Succession.

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VI. That whereas her Majesty Queen *Anne* did send *Milford Crow* Esq; to invite the People of *Catalonia* into the Interest of King *Charles* III. the present Emperor, and to join with her Majesty and her Allies against the common Enemy, and was pleased to authorize the said Minister to give them her utmost Assurances to procure the Establishment of all their Rights and Immunities, upon Condition they should receive the said King *Charles* as King of *Spain*, and utterly renounce the House of *Bourbon*; and in her Majesty's Instructions to the Earl of *Peterborough* and Sir *Cloudfly Shovel*, in *May* 1705. they were ordered to assure the *Catalans* of her Majesty's Support, and to promise them in the Queen's Name, that she would secure them a Confirmation of their Rights and Privileges, that they might be settled on a lasting Foundation to them and their Posterity, threatening Destruction to their Country, if they refus'd to come into her Measures; and a *Manifesto* was published by the Earl of *Peterborough* in *Catalonia* to that Effect, by the Advice of the Earl of *Oxford*, who was then Secretary of State: And whereas the Nobility, Clergy, and whole Province of *Catalonia*, and the Inhabitants of the Island of *Majorca* relying on the Faith of those Royal Assurances, did utterly abandon the House of *Bourbon*, and acknowledge *Charles* III. for their Sovereign, and did join their Arms with those of her Majesty and her Allies, against the Duke of *Anjou*, and in a short Time afterwards the Principality of *Catalonia* was delivered from the *French* Yoke, and great Supplies having been granted by Parliament for reducing the whole Kingdom of *Spain* to the Obedience of the House of *Austria*, the Allies were attended with such vast Success, that they twice entered the Capital City of that Kingdom; to which the brave *Catalans* did not a little contribute: But the said *Robert* Earl of *Oxford* having enter'd into a Conspiracy, for subjecting the whole *Spanish* Monarchy to the House of *Bourbon*, and maliciously designing the utter Ruin and Destruction of the antient Rights, Liberties, and Privileges of the *Catalans*, who had made so glorious a Stand for the Preservation of them, did, with other evil Counsellors, form a Design not only for abandoning the *Catalans*

laws to the Fury of the Duke of *Anjou* and his Adherents, but for the final Extirpation of all their Rights and Liberties; and in Execution of that his Intention, during the private and pernicious Negotiations of Peace which were carried on between him and the Ministers of *France*, and before any Negotiation was set on Foot, in Form of Law, between *Great Britain* and *Spain*, did advise her Majesty to give Directions to the Lord *Lexington* to acknowledge the Duke of *Anjou* King of *Spain*; but was greatly wanting in his Duty, in not advising her Majesty to give Instructions to her said Minister peremptorily to insist on securing the *Catalans* their Liberties at the Conclusion of the Peace, but did maliciously and treacherously advise her Majesty to conclude a Peace with the King of *Spain* without any Security for the antient Rights, Liberties, and Privileges of that brave, but unhappy Nation; and did advise her Majesty, to send Admiral *Wishart* with a strong Squadron of Men of War into the *Mediterranean*, to favour the Duke of *Anjou's* Reduction of *Barcelona*, and the Island of *Majorca*; by which her Majesty, contrary to her pious Intentions, the Faith of Nations, and Humanity itself, and contrary to her solemn and repeated Assurances, was prevailed on to abandon a distressed People, drawn in and engag'd by her own Invitation into an open War with the Duke of *Anjou*, for the Preservation of the Liberties of *Europe*, and the Commerce of *Great Britain*, giving them up a Sacrifice to the implacable Resentment of their enrag'd and powerful Enemy.

For which the Commons do further impeach the said *Robert*, Earl of *Oxford* and *Mortimer*, of further High Crimes and Misdemeanors, in the said Articles contain'd, praying, that he may be put to answer, &c.

L. H. Steward. Read the Answer to the Impeachment.

[*The Clerk reads the Answer.*]

The Answer, of Robert Earl of Oxford and Mortimer, to the Articles exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in Maintenance of their Impeachment against him for High Treason, and other High Crimes and Misdemeanors, supposed to have been by him committed.

The Earl's Answer to the Articles of Impeachment.

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THE said Earl, saying to himself all Advantages of Exception to the said Articles, &c. for Answer thereto saith, He admits, that many Treaties and Alliances have been enter'd into between the Crown of *England* and other Powers, for their mutual Security, and to prevent the immoderate Growth of the Power of *France*; and therefore it was laid down as a fundamental Maxim among the Allies, that *France* and *Spain* should never be united under one Head, but that the Prevention of the Union of *Spain* and the Empire, was equally the Design of the Alliance: Nor could the Continuance of *Spain* in the House of *Bourbon* be prejudicial to the Allies, if the Union of that Crown with *France* could be prevented. As new Dangers of that Union were apprehended, new Treaties were enter'd into to obviate them: The Treaty of Partition was concluded upon that View; and he presumes, the Parliament did not condemn it, because Part of the Dominions of *Spain* were thereby allotted to the House of *Bourbon*; but because such considerable Parts of those Dominions, viz. *Naples*, *Sicily*, and the Province of *Guipafova*, were allotted to that Branch of the House of *Bourbon*, as was to inherit the Crown of *France*, which might have been a dangerous Addition to the then formidable Strength of that Crown; and because it was made against the repeated Remonstrances of *Charles II.* King of *Spain*, who declar'd, *That such Partition Treaty could have no other Effect, than to force Spain to throw itself into the Arms of France, to prevent the dismembring of the Spanish Monarchy.* And King *Charles II.* thereupon actually bequeathed the entire Monarchy of *Spain* to the Duke of *Anjou*, who on his Death took Possession of it. That his Accession, however, did not produce the Alliance in the Article mentioned between the late Emperor *Leopold*, King *William*, and the States

States General; for both King *William* and the States acknowledg'd the Duke of *Anjou* as King of *Spain*, allowing thereby, that his Enjoyment of that Kingdom, while he was a younger Branch of the House of *Bourbon*, was not destructive of the Liberties of *Europe*, or the Ballance of Power. Afterwards, when the *French* King had seiz'd the *Spanish Netherlands*, King *William* came into the Assistance of the States, as an Auxiliary only, by sending them the 10000 Men which *England* was oblig'd by Treaties to furnish. After which several Conferences were held at the *Hague*, between the Ministers of *England*, *France*, and the States, to find out some Expedient to prevent a War: At which Conferences the States often asserted, *That though they had acknowledg'd Philip King of Spain, yet such Acknowledgment was not contrary to the Demand of a reasonable Satisfaction to be given to the Emperor, for his Pretensions to the Spanish Succession*; which was in Effect to declare, *That the Satisfaction demanded for the Emperor, was such as would leave King Philip in Possession of Spain*. But these Conferences breaking off in *August*, 1701. in *September* following King *William* enter'd into the grand Alliance with the Emperor and the States General, whereby it was agreed, That Endeavours should be us'd by amicable Means, in the first Place, to obtain the Satisfaction desir'd for the Emperor, who at that Time would probably have accepted a very easy Composition for his Pretensions. But the *French* King soon after acknowledging the Pretender, King *William* and the Parliament of *England* being provok'd thereby, resolv'd to enter into the War, which had been begun by the Emperor alone in *Italy* the Year before. And the late Queen, in her Declaration of War, publish'd in *May* 1702. makes this Indignity the chief Motive of her engaging in it. The Earl admits the several Treaties mention'd in the Preamble of the Articles, the Advice of Parliament, and the Speeches from the Throne; but observes, That the avow'd Ends of the Grand Alliance in 1701. were the procuring a reasonable Satisfaction to the Emperor for his Pretensions to the *Spanish* Succession, the Security of the Dominions of *Great-Britain* and the States, with the Navigation and Commerce of their Subjects, and the Prevention of the Union of *France* and

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Spain under the same Head; and the Territories pointed out in the fifth Article, were the furthest Views of that Alliance: No mention was made of the Recovery of the whole Monarchy of *Spain* to the House of *Austria*, either in the grand Alliance, or the defensive Alliance made the same Year between King *William* and the States.

And when in the Alliance between the Emperor, *Britain*, the *States-General*, and *Portugal*, in the Year 1703. it was concerted to set the Archduke *Charles* upon the Throne of *Spain*, he was then but a younger Branch of the House of *Austria*, did not lay any Obligation on the Allies to procure that Monarchy for him, when he was elected Emperor; since the Imperial and Hereditary Dominions, join'd to the whole *Spanish* Monarchy, would have given such an Excess of Power to one Prince, as would have destroy'd that Ballance of Power which her Majesty and the rest of her Allies had, in all their Treaties, laboured to preserve: And it is a known Rule, in reference to Leagues between Princes, that if there happens a material Change in what was the principal Ground of the Treaty, the Obligation thereof ceases. That the Advice of Parliament always was of great Weight with her Majesty, and the Earl always pay'd a just Regard to it; and he doubts not but the Peers had proper Inducements, when they gave their Advice to the Throne, *That no Peace could be safe, honourable, or lasting, so long as Spain and the West-Indies continued in the Possession of any Branch of the House of Bourbon*: But that, when her Majesty communicated to her Parliament the Terms on which a Peace might be made, the 6th of *June*, 1712. wherein *Spain* and the *West Indies* were allotted to the Duke of *Anjou*, both Houses of Parliament, by their respective Addresses to her Majesty in the same Month, expressed their entire Satisfaction; both Houses of Parliament also severally congratulated her Majesty on the Peace, and join'd in an Address on the 22d of *April*, 1714. expressing their just Sense of her Majesty's Goodness to her People, in delivering them by a safe, honourable, and advantageous Peace with *France* and *Spain*, from the heavy Burthen of a consuming Land War, unequally carried on, and become at last impracticable. The Earl acknowledges, that about *August*, 1710. her

her Majesty was pleased to readmit him to a Place in her Council, and require his Service in Offices of Trust; to which he submitted with great Reluctance, from the Prospect of the Difficulties with which he was likely to struggle: But as he never asked any Employment, or used any wicked Arts to obtain the same, so he sincerely endeavoured to discharge his Duty with the utmost Integrity, endeavouring to promote the Honour and Service of her Majesty, whose Aim he knew to be the Welfare of her Kingdoms in the first Place, and, as far as she judged it consistent with that, the Common Good of her Allies. That in *September, 1710.* her Majesty, whose undoubted Prerogative it was, thought fit to dissolve the Parliament, and call a new one. In 1711. Propositions were made by *France* to her Majesty for a Peace, without the Contrivance or previous Knowledge of the said Earl. Her Majesty expressed her Concern at the Disappointment of former Negotiations, and her earnest Desire to put a speedy End to the War, and the Effusion of Christian Blood, and to ease her Subjects from the heavy Burthen of their Taxes. The said Earl acknowledges he did think a Peace was very much for the Interest and Advantage of *Great Britain*; and that the most favourable Juncture for obtaining advantagious Terms of Peace, was immediately after the signal Victories gain'd in 1706. For after the Reduction of the Dominions of the Electors of *Bavaria* and *Cologne*, with other important Conquests in *Germany*; after the Destruction of three great Armies of *France* in *Flanders, Spain, and Piedmont*; after the Recovery of the *Spanish Netherlands, Milan, and other Territories in Italy*, it might have been hoped, from the great Distress the Enemy was reduced to, a just and reasonable Peace would have been obtained, since so much had been gained from the Enemy, and so much more, in all Probability, would have been yielded by them, as would have fully answered the Ends of the Grand Alliance. Peace was at that Time sought by the Enemy; and the Earl, who was then one of the principal Secretaries of State, owns he then advised the Accepting of it: For the War had been continued on so unequal a Foot, that the Burthen of it annually increased, and, at the Time when these Proposals were made by *France*, was become almost insupportable

The necessity of making Peace, from the Allies refusing to furnish their Quota's towards the War,

supportable. The House of Commons were informed by one of the late King *William's* Secretaries of State, indeed, that the Proportion of Forces had been settled between *England* and *Holland*, (*viz.*) *That England was to furnish two Parts of Five by Land, and the States the other Three; and England was to furnish five Parts of Eight by Sea, and the States the other Three:* But the States denying afterwards that they were under any such Obligation, occasioned *England's* bearing an unequal Part in the War. The States insisted they ought not to be pressed beyond their Ability, and made themselves the sole Judges of what they were able to do. In the mean Time the Charge of the War was greatly increased on the Subjects of *Britain*. In 1702. it was under four Millions; from that Time it gradually increased till the Year 1706. when it amounted to five Millions and a Half; and still increasing till 1711. it was advanced to near seven Millions, besides vast Debts the Nation was involved in, the very Interest of which amounted to three Millions: And the Revenues of *Britain* were under such Anticipations, that it was found difficult to raise two Millions and a Half for the growing Service, to be paid within the Compass of the Year; so that when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain so heavy upon Land for twenty Years, were considered, the Earl believes it could not be thought for the Publick Interest to prolong the War without an absolute Necessity. At the same Time the States had managed with so much good Husbandry, that he could not learn they had laid one additional Duty upon Trade, from the Year 1702, to 1711. Acquisitions made on the Continent by the Expence of so much *British* Blood and Treasure, were enjoy'd by the *Dutch*, and the other Allies; and the *Dutch* had this further Advantage of *Britain*, that they all the while carried on a Trade with *France*, from which the *British* Merchants were excluded. That though the Princes of the Empire were obliged by Treaty to furnish certain Quota's of Troops, they used to alledge for their Neglect, *That those Troops which they were obliged to furnish at their own Expence, were in the Pay of Great Britain.* The Queen alone furnished the Emperor's Quota in *Portugal*. The King

of *Portugal* neglected to find his Proportion of twelve thousand Foot, and three thousand Horfe; which he was obliged by Treaty to do at his own Expence, and even refused to permit the eleven thousand Foot, and two thousand Horfe, for which he had a Subsidy from the Queen, to be paid by Musters; and when he was press'd to furnish his full Number of Troops, alledged he could not for Want of the Subsidies the States ought to have paid him: And the States sending few or no Troops to *Spain*, after the Battle of *Almanza*, and all the other Allies withdrawing their Proportions, almost the whole Charge of that War was born by *Britain*. And though it pleased God to bless the Queen's Arms with wonderful Success, yet it did not appear, that after the Year 1706. our Successes in other Parts countervail'd our Losses in *Spain*: For after the Loss of two great Battles there, after being twice obliged to retire from *Madrid*, and after the taking the *British* Troops at *Brillinea*, the Recovery of *Spain* seem'd desperate, especially when some of the Allies made pressing Instances for recalling part of their Troops, as they had frequently done during the War. From all which it appear'd how just the Grounds were, on which both Houses of Parliament represented, *That the War had been unequally carried on, and at last become impracticable*. And the Earl cou'd not be thought to have design'd any Disservice to his Country, if in such a Situation of Affairs he did not dissuade the Queen from hearkning to Overtures of Peace. The said Earl believes, That in all the Negotiations, the Allies had such a Knowledge of all Measures taken by her Majesty, as the Treaties with them requir'd: That the Propositions made by *France* in April, 1711. were immediately communicated to the Ministers of *Holland*; and the Queen then assur'd them of her Resolution to act in Concert with them in making Peace and War: That the States having express'd their Inclination to Peace, and desir'd that *France* might explain herself on the Points contain'd in those Propositions, her Majesty endeavour'd to obtain such Explanations, and communicated them to the States; and if the Queen did not think fit to proceed in the Method of a Preliminary Treaty, which had prov'd ineffectual in 1709, and 1710, but upon Articles sign'd by a Minister of *France*, authoriz'd

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thoriz'd by that King to open Conferences for a Peace, this might be justified by many Precedents of such Treaties: That the Earl, during the whole Negotiation, had acted with sincere Intentions to obtain a general Peace, for the Welfare of the Queen and her Kingdoms, and such as might give reasonable Satisfaction to her Allies, and was not conscious of having transgress'd his Duty, either as a Privy-Counsellor, or Officer of State: That many of the Articles, with which he is charg'd, are complicated with such Circumstances, Aggravations, and Inferences, as may render it difficult for him to acknowledge some Facts, without seeming to acknowledge those Circumstances or Inferences; and therefore begg'd he might be allow'd to distinguish between the Acts themselves, and the Inferences drawn from them; and that when he acknowledges any Fact, he may not be understood to acknowledge those Consequences which are deduc'd from it, unless it appear, that they were the Aim and Design of the said Earl, or were the necessary Result of any Acts he had done.

His Answer to
the first Article.

I. In Answer to the first Article, he, the said Earl, saith, That he always had the greatest Regard to her Majesty's Honour and Safety, the Engagements she was under to her Allies, and the Liberties of *Europe*: That he was never devoted to the French King, or had acted, while he was in the Treasury or Privy-Council, contrary to his Duty in Defiance of Treaties, the Advice of Parliament, or her Majesty's Declarations from the Throne. He denies that he form'd any Contrivance to set on Foot a separate or destructive Peace with *France*, or knew of any such; but believes, That in *April 1711*. *France* made some Proposals of Peace, sign'd by *Monfieur de Torcy*, Secretary of State to the French King, which were immediately communicated to the States; who declar'd themselves ready to join in any Measures, her Majesty shou'd think proper for obtaining a good Peace, and hoped she would bring the *French* to explain their Proposals; and thereupon her Majesty sent Mr. *Matthew Prior* to the Court of *France*, to obtain an Explanation of the first general Offers: But the Earl denies he advised the Queen to send Mr. *Prior* to make Propo-
sitions

fitions of Peace, without communicating them to the Allies, or that, by his Privy, he communicated any Propositions, wherein *Britain* or the common Interests of *Europe* were betray'd, or knows that Mr. *Prior* had Power to make such Propositions: That if any Article was inserted in the Propositions to be made by Mr. *Prior*, that the Secret shou'd be kept till divulg'd by mutual Consent, he denies it was inserted by his Advice; and if any Instructions were given for not divulging Propositions which concern'd *Britain* in particular, they did not manifest any such Design as is mention'd, since it was the undoubted Right of every Member of a Confederacy to demand particular Advantages for themselves not inconsistent with their Alliances, and which were not to take place but on the Conclusion of a general Peace: And that the States-General, in the Treaties of 1709, and 1710. did the like for themselves: But he believes, that to prevent any Jealousies, even the Propositions that related to *Britain* in particular, were communicated to the Allies; and that her Majesty was so far from treating singly for the Allies, that she chose to have all the Parties admitted to the Congress, to treat for themselves; nor does the Earl know of any Negotiations of Peace, set on Foot by Persons employ'd by her Majesty, which were more advantageous to *France*, than *France* had ask'd, or that tended to create a misunderstanding between her Majesty and her Allies.

II. To the second Article the Earl saith, He believes that Mounfieur *Mesnager*, in the Year 1711. did come into *Great-Britain* with her Majesty's Leave, and bring a Letter to her from the *French* King, acknowledging her Majesty Queen of *Great-Britain*, and also expressing a Desire of Peace: That it was the usual Practice in most Nations, and especially in *England*, for Privy Counsellors, by verbal Orders from their Sovereign, to confer with Foreign Ministers; and that full Powers are given to Ministers sent abroad, for the Justification of Persons with whom they treat, rather than to justify the Ministers themselves; and denies that he did secretly, or without Authority, treat with *Mesnager*, or did advise or promote the making a private and separate Treaty with *France*; but believes there

there was a Paper, stiled, *The Answer of France, to the preliminary Demands of Great Britain more particularly*, sign'd by *Mesnager* only; to which was subjoin'd a Declaration of the Queen's Acceptance of those Preliminary Articles, which were to be reduc'd into the usual Form of Treaties, to the common Satisfaction of *Great Britain* and *France*, and this only in case of a general Peace; which Declaration might be sign'd by the Lord *Dartmouth* and Mr. Secretary *St. John*; but submits it to their Lordships whether this can be call'd a separate Treaty; and believes that the Allies had early Notice of the said Proposals from *Great Britain*. He denies that the Interests of *Britain* were thereby given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, since it was express'd in these Proposals, That her Majesty expected the Advantages mention'd in them, what Prince soever shou'd possess the Monarchy of *Spain*; and he believes her Majesty had then a Prospect that *Spain* wou'd fall to another Prince. He denies he knew of any separate Treaty, whereby the Interests of *Britain* were given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, sign'd by *Mesnager*, on the Part of *France*, and by the Duke *Dartmouth* and Mr. *St. John* on the Part of the Queen; or that he assum'd Regal Power, or treated with the Enemy without Authority, or did any Thing to subvert the Constitution, or introduce illegal or dangerous Methods of transacting Affairs of State: That he never endeavour'd to dissolve any Treaties her Majesty was engaged in, or was privy to any Treaty whereby the Queen was brought under a Dilemma of submitting to *France*, or losing the Confidence of her Allies.

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III. As to the third Article, he denies, That to disguise and carry on any private Negotiations, he did advise the preparing a Set of general Preliminaries, on the Part of *France*, to be sign'd by *Mesnager*, or advis'd her Majesty to receive them; but believes certain Articles, call'd Preliminary Articles on the Part of *France*, sign'd by *Mesnager*, were receiv'd by her, and communicated to the Ministers of the Allies then in *England*, as the Grounds whereon they might treat of a general Peace: But why the Advising the receiving them should be stiled Impious Advice, since it is not against any known Law,

Law, and the Proceedings upon such Preliminaries cou'd not be more unſafe, than the Proceeding without any Preliminaries, he cou'd not conceive: And if any Treaty was ſign'd by the Lord *Dartmouth*, or Mr. *St. John*, on the Part of *England*, or by *Mefnager* on the Part of *France*, it was not conceal'd from the Allies, the Council, or Parliament, by his Advice; nor did he adviſe the communicating the ſaid general Preliminaries to the States, as a Foundation for opening the Conferences of Peace with *France*; nor did he adviſe the Inſtructions, mention'd in this Article, to be given to the Earl of *Strafford*; but believes the ſaid Inſtructions were well warranted by the Truth of the Facts: That the Propoſitions ſent over to *France*, were not ſo general as thoſe of *Monſieur Torcy*, nor in any reſpect enſnaring or deſtructive to *Britain* or the Allies; nor is he conſcious that ever he adviſed the giving Inſtructions to Ambaſſadors, whereby the Truth and Sacredneſs, which ought to conſtitute ſuch Inſtructions, were proſtituted, or the Honour of her Majeſty betray'd: And hopes no Inſtance can be given, where her Majeſty's Royal Hand was made the Inſtrument to advance the Intereſt of the Common Enemy.

IV. To the fourth Article he ſays, He does not Vol. vi. p. 129. remember what Representations were made by Mr. *Buys* to her Majeſty; but admits that at a Committee of Council there might be made ſuch a Declaration to Mr. *Buys*, as in the ſaid Article is mentioned; and that it was agreeable to Truth and the Sentiments of her Majeſty, though he did not adviſe it; nor does he know wherein the ſaid Articles, ſign'd by *Mefnager*, and accepted by the Lord *Dartmouth* and Mr. *St. John*, were inconſiſtent with ſuch Declarations, or how her Majeſty was diſhonoured, or her Allies abuſed thereby; or that any Negotiation enter'd into with *France*, was dangerous in itſelf, or fatal in its Conſequences.

V. As to the fifth, he admits, That the Biſhop of *Briſtol* and the Earl of *Strafford* were appointed her Majeſty's Plenipotentiaries to treat of Peace; and that their Inſtructions were, as in the ſaid Article is ſet forth: And that when they were ſo inſtructed to inſiſt that *Spain* and the *West-Indies* ſhou'd not be allotted to the Houſe of *Bourbon*, no Treaty had been

been agreed, whereby *Spain* and the *West-Indies* shou'd remain in a Branch of that House; for her Majesty had then just Ground to believe, that King *Philip* wou'd be induc'd to abandon *Spain* and the *West-Indies*, and content himself with the Dominions of *Savoy* and *Sicily*; and the Queen declar'd, she believ'd the Prospect King *Philip* had of succeeding to the Crown of *France*, wou'd be an Inducement to him to be easy with that Allotment: And he believes, therefore, that whoever contriv'd those Instructions, prepar'd them conformable to her Majesty's real Sentiments: And if King *Philip*, upon Information that the then Dauphin was likely to live, alter'd his Sentiments, and chose rather to renounce the French Monarch, he thought no Person, who acted in the Service of the Crown, cou'd be safe, if it might be charg'd on him as a Crime, that he advis'd Instructions which by intervening Circumstances afterwards became improper; nor does he know how her Majesty's consenting to such Instructions, cou'd imply any Design to impose upon his Imperial Majesty or the Allies, or to conceal any Negotiations between *Great Britain* and *France*; and he is confident it will not appear by any of his Actions, on the strictest Scrutiny, that he ever enter'd into any Confederacy with the Ministers of the Enemy, or had any Design to impose on his Imperial Majesty, or any of the Allies, or was privy to any Secret Treaties between *Great Britain* and *France*, whereby any Reproach cou'd be brought to the Crown, or any Treaties violated wherein her Majesty was engaged.

Vol. vi. p. 130. VI. To the sixth, he admits, That the Progress of the Negotiation of Peace was delay'd by Debates, concerning the Enemy's Refusal to give their Answer in Writing to the Demands of the Allies; but does not know the Ministers of *Britain* contributed thereto; and if her Majesty authoriz'd her Ministers, during that Time, to write directly from *England* to *France*, to facilitate the general Negotiations of Peace, he doth not apprehend the Queen was debarr'd from so doing by any Law, or that by constituting the said Plenipotentiaries, she had so far delegated her Authority, as to be disabled to negotiate any Matters conducing to that End in such other Manner as she saw fit: But denies that he

he knows of any Negotiation, relating to the Peace, carried on without the Communication thereof to her Allies; or that he assum'd Regal Authority, in treating with *France*, or concerted any Terms of Peace prejudicial to her Majesty or her Allies.

VII. To the seventh he answers, That he never advis'd her Majesty to accept of a Treaty with *France*, as this Article charges; but acknowledges, that if he had been call'd upon to give his Opinion, concerning the leaving *Spain* and the *West Indies* in the Possession of a Branch of the House of *Bourbon*, and accepting the Renunciation of the Duke of *Anjou*, he doth not at present see any Reason why he might not have been of Opinion for leaving *Spain* and the *West-Indies* to the present Possessor, rather than have continued a War so burthensome to the People, and so impracticable upon the Foot it then stood; and if such Memorial, as is mentioned in this Article, was sent by any Minister of *France* to the Secretary of State, he looks upon the same as a Proof of the Earnestness of the Court of *France* to avoid such Renunciation, which might more effectually prevent all Possibility of annexing the Crown of *Spain* to that of *France*.

VIII. In answer to the eighth Article, he admits, That the late Queen, on the 7th of *December*, 1711. did recommend it from the Throne to make Provision for an early Campaign, in order to carry on the War with Vigour; and as the best Way to render the Treaty of Peace effectual; and that Supplies were granted accordingly; and her General, the Duke of *Ormond*, might be empower'd to declare her Resolution of carrying on the War, and to concert with the Allies, the proper Measures of entering upon Action: But whether the Allies were superior to the Enemy, or would have been able, by Battle or Siege, to have better'd their Affairs, he is not able to say; but it is obvious to every one, that if any Disaster had happen'd to the Allies at that Juncture, it must have been fatal to them; and though the Divine Assistance had been very remarkable in the many Victories her Majesty's Forces had obtain'd, yet her Piety was such, that she wou'd not tempt Providence by hazarding the Blood of her Subjects, without the greatest Necessity, when she had so near a Prospect of the Conclusion of a Peace,

Peace; and she might thereupon send Orders to the Duke of *Ormond*, to avoid engaging in any Siege or Battle; which her Majesty was at Liberty to do when she thought proper, as well as the Deputies of the States, who had often refus'd to Engage in Siege or Battle upon such Motives as they thought reasonable, when the Generals of the Allies, and their own Generals were of Opinion, they had a visible Advantage of the Enemy: Nor was he ever inform'd of any sure Prospect the Confederate Army then had of gaining new Conquests, or of being enabled to have forc'd better Terms of Peace, than there was at that Time a likelihood of; but on the contrary was inform'd, That the Forces of *France* were superior to the Allies in Number, especially in Horse: However, he denies his advising the sending any such Orders to the Duke of *Ormond*, as is mention'd, or that he had any Design to disappoint the Expectations of the Allies, or to give Success to any secret Negotiations with the Ministers of *France*. He denies also his advising the sending those Orders to the Bishop of *Bristol*, one of her Majesty's Plenipotentiaries, to declare to the Dutch Ministers, That her Majesty look'd upon herself, from their Conduct, to be under no Obligation whatever to them; nor is he conscious he ever gave any Counsels, by which the Progress of the Victorious Arms of the Confederates were stopp'd, or which tended to destroy the Confidence between her Majesty and her Allies, or make the French King Master of the Negotiations of Peace.

IX. To the ninth, He denies that he warranted, or knew of the separating her Majesty's Forces from the Confederate Army; but believes, that the Confederate Generals did, in *June* or *July*, 1712. propose to the Duke of *Ormond* to decamp from the Ground where they then lay, and to proceed to *Landrecy*, in order to form the Siege of that Place; and that the Duke of *Ormond* wou'd not consent thereto, but gave Notice to the said Generals, That if they decamp'd, they must not expect that he wou'd follow them; (and believes there may be Instances given, where Generals of other Potentates in the Alliance have refus'd to comply with what has been propos'd to them by her late Majesty's General;) and he hath heard, that notwithstanding
such

such Notice from the Duke of *Ormond*, the said Generals separated themselves and their Forces from the said Duke, and marched towards *Landrecy* without him; and that the Generals of the Auxiliary Troops, paid by her Majesty, refus'd also to continue with the Duke, or obey his Orders: And he supposes it might proceed from that Instance of Disobedience in those Troops, that she did not think fit immediately to pay the Arrears of those Forces which had so obstinately withdrawn themselves from her General. He believes that the Forces of some of the Allies were engaged in the unfortunate Action of *Denain*, that the Siege of *Landrecy* was raised, and the Towns of *Quesnoy*, *Bouchain*, and *Doway*, were some Time after retaken by the *French*; but those Disasters might have been prevented by a Compliance with her Majesty's Measures. Vol. vi. p. 131.

X. In Answer to the tenth, he denies that he concerted a private Negotiation for a Suspension of Arms, or advised her Majesty to send over *Henry Viscount Bolingbroke* to *France*, to settle such Suspension, but believes that about the 19th of *August*, 1712. N. S. a Suspension of Arms was agreed on for four Months, and believes it will appear, That the said Suspension was only a Continuance of a former Agreement for a Cessation of Arms; into which her Majesty had invited the Allies; and believes her Majesty might be induc'd to desire such Cessation, as was usual among Princes engaged in War, during a Negotiation of Peace, whereby the *British* Merchants enjoy'd a free Trade to the several Countries of *Europe*, as the *Dutch* had done during the War; nor did her Majesty intend the least Violation of any Treaties with her Allies, or to expose them to the Insults of the Enemy thereby; nor did he discern how those Consequences could ensue, without the wilful Default of the Allies; but, however, the Earl could not be charg'd with any Consequences of that Suspension which he never advised.

XI. In Answer to the eleventh, he saith, he believes that in the Negotiations of Peace, the *French* King did insist on the yeilding up of *Tournay* to him by the States; but that the States desiring her Majesty's Interposition with the *French* King on their

Behalf, she did prevail with him that the said Town and Fortrefs of *Tournay* shou'd be continued to the States-General; as Part of their Barrier; but the Earl denies, that during the War he did Aid or adhere to the *French* King, or advise the Enemy in what Manner *Tournay* might be gain'd from the States-General. He admits, That during the Negotiations of Peace, he was one of her Majesty's Privy Council, and gave his Advice as such; but insists, That for a Privy Counsellor, or Minister of State, during Negotiations of Peace, to advise concerning the yielding or giving up any Town or Province on the Conclusion of a Peace, was not High Treason by any Law of this Realm; and that such Construction wou'd deprive the Crown of the Advice of the Members of the Privy-Council, by deterring them from giving such Advice, as by their Oaths and Duty they were oblig'd to do, and overthrow all Means of restoring Amity among Princes, and must render the Law in case of High Treason very uncertain, and highly dangerous to the Lives and Liberties of the Subject.

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XII. In Answer to the twelfth, he does not admit that her Majesty was engaged by Treaties, as in the said Article is alledged; but denies he did ever aid or adhere to the Duke of *Anjou*, or advise the giving up *Spain* or the *West Indies* to him; but if he had, such Advice cou'd not have amounted to High Treason, insisting as in his Answer to the last Article he had insisted.

XIII. To the thirteenth the Earl saith, That he believes her Majesty might think it reasonable, considering the Share and Burthen her People had sustain'd in the War, that *France* shou'd, in the first Place, adjust the Interest of *Britain*, but doth not know of any Concessions, made by the Ministers of *Great-Britain*, to promote the Interests of *France* against the Allies, or to enable *France* to impose the Terms of a general Peace; denies that he was engaged in Concert with *France* in any Negotiation destructive to his Country, or to Sacrifice the Commerce of *Great-Britain* to the Aggrandisement of *France*; denies that he advised the Demands for *Great Britain*; in Point of Commerce, shou'd be made in loose, general, or insufficient Terms; and believes, when it was considered what Advantages were

were likely to ensue to the Commerce of *Great Britain* by the Assiento Contract, and the Liberty of Trading to the *Spanish West Indies*, by the Cession of *Arcadia*, the Bay and Steights of *Hudson*, the Island of *St. Christophers*, *Newfoundland*, the Island of *St. Peter*, with other adjacent Islands, by the Demolition of *Dunkirk*, and the Cession of *Port-Mabon* and *Gibraltar*, it wou'd not be thought the Commerce of *Great Britain* had been neglected by her Majesty in the late Treaties of Peace; and though the Earl doth not admit that he advised the ninth Article of the Treaty of Commerce with *France*, yet he observes that nothing is positively stipulated in that Article, but the whole is conditional, and left to be determined by the Wisdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of a Treaty to the Consideration of the Parliament. He denies that he advised, That *France* should have Liberty of Fishing and drying Fish on *Newfoundland*, or the making a Cession of the Isle of *Cape Breton* to *France*; nor doth he know that *Cape Breton* was ever Part of the Territories of *Great Britain*, but doubts not to make it appear, that many Advantages in Trade were stipulated for *Britain* in the late Treaties of Peace and Commerce, which have been enjoy'd by the Subjects of this Kingdom since the conclusion of the Peace, notwithstanding the Parliament hath not thought fit to make any Act to enforce the ninth Article of the Treaty of Commerce with *France*; and as the Earl denies his being concern'd in any Violation of Treaties, or in carrying on the Measures of *France*, or in Negotiations which wou'd terminate in the Sacrifice of the Commerce of *Great Britain* to *France*, so he observes, with Satisfaction, the flourishing Condition of the Trade and Navigation of these Kingdoms by means of the late Peace, in the great Increase of the Number and Tonnage of Shipping, of the Exportation of the Woollen Manufactures, the Fish, and other Produce of this Kingdom, whereby the Customs have been greatly advanc'd, three Millions of Gold and Silver lately Coin'd, and the *Exchange* been all along in favour of *England* to and from all Parts of *Europe*.

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XIV. In Answer to the fourteenth, the Earl doth not admit that he form'd the Project for disposing of *Sicily* to the Duke of *Savoy*; but in Justification of her Majesty's Conduct in that Matter, the Earl observes, that by the grand Alliance it was agreed, That the Confederates shou'd endeavour to recover *Sicily* from the Enemy; that his Imperial Majesty might have Satisfaction for his Pretensions to the Spanish Monarchy; and that the Trade of *Britain* and *Holland* might be better secur'd: But since the Empire was now fallen to *Charles III.* who was then a younger Branch of the House of *Austria*, and since the *Spanish Flanders, Milan, and Naples*, might seem a reasonable Satisfaction for his Imperial Majesty's Pretensions to the *Spanish* Succession, and since the Trade and Navigation of *Britain* and *Holland* might be as well secur'd by the Disposition of *Sicily* to the Duke of *Savoy*, and it might be more difficult to obtain it for the House of *Austria* than for that Duke; and there were Grounds to believe, that the Princes and States of *Italy* wou'd suffer any Extremities, rather than submit that *Sicily*, together with *Milan* and *Naples*, shou'd be in the Hands of the Emperor, the said Earl did not discern, how the disposing the said Kingdom to the Duke of *Savoy* cou'd be thought unjust to his Imperial Majesty, or a Violation of the Grand Alliance; and since it was allow'd, the Duke of *Savoy* never made any Application to obtain *Sicily* for himself, it is evident that the Persons who advis'd the Queen to that Allotment, did not act upon private Interest, or had any other View than the Security of the Trade and Navigation of *Britain* and *Holland*, and the Preservation of the Ballance of Power in *Europe*.

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XV. To the fifteenth he saith, he was always of Opinion the Word of the Sovereign was Sacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Ministers to maintain the Honour of the Crown with the utmost Exactness; nor did he know that ever he had been defective in his Duty in this Particular, or took upon him any arbitrary or unwarrantable Authority, much less the Chief Direction of her Majesty's Councils. He believes her Majesty did, on the 7th of *December, 1711.* declare, That her

her Allies, especially the States-General, had by their ready Compliance for opening a Treaty of General Peace, express'd their Confidence in her; and in Vindication of her Majesty, who was a Princess of strict Piety and Truth, he observes, that the States-General sent over Mr. *Buys* to her, with Letters full of Assurances of Respect for her Person, and their Resolutions not to separate themselves from her; and the said Mr. *Buys*, immediately upon his Arrival, deliver'd Pass-Ports for the French Ministers to come to *Utrecht*, and, at a Meeting of several Lords of the Council, shew'd his Approbation of sending circular Letters to invite the rest of the Allies to the General Congress; he also exhibited full Powers for entering into a new Treaty, whereby the Queen and the States shou'd be mutually engaged to each other in making War and Peace, to Guarantee the Peace when made, and to invite the rest of the Allies to enter into such Guarrantee; all which being previous to the 7th of *December*, 1711. it is evident her Majesty's Declaration from the Throne was founded on the strictest Truth; and whoever consider'd what had been done by her Majesty for the Service and Satisfaction of all her Allies in the ensuing Treaty, wou'd acknowledge she had done her utmost to procure for the Allies, and especially for his Imperial Majesty, all that they could reasonably demand, agreeable to her Speech on the 7th of *December*, and her Message of the 17th of *January* following: And if by any extraordinary Demands, or groundless Jealousies, or other Accidents, her Majesty was not able to obtain for the Allies all the Advantages she desir'd, this wou'd not derogate from the Truth and Sincerity of her Expressions; nor can one, who considers the Efforts she had made in *Spain* for so many Years, entertain a doubt but that she had done her utmost for recovering it from the Duke of *Anjou*. And the said Earl did not see how her Majesty cou'd be charg'd with uttering any Falsity, when she takes notice how groundless the Reports were that had been spread of a separate Peace, when there was not then, or at any other Time, the least Foundation for such Report, since only some few Points were adjusted, relating to the Interests of her own Kingdoms, and even those were to have no Effect, but on the Con-

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clusion of a General Peace, and were, before the Conclusion of the Peace, communicated to the Allies. He does not conceive that the Proposal of the Renunciation was merely speculative, but that it was of such a Nature as wou'd execute itself, and keep the Crowns of *France* and *Spain* more effectually divided than ever, if it were consider'd, that it did not consist only in the Renunciation of King *Philip*. of his Right to the Crown of *France*, but that there was a Title to that Crown thereby given to the Duke of *Orleans*, and after him to the rest of the Princes of the House of *Bourbon*, who cou'd not be presum'd to want Will or Power to take Possession of the Crown of *France*, in Opposition to a Prince, at such a Distance, who had renounc'd it.

XVI. To the sixteenth he insists, That it is the undoubted Right and Prerogative of the Sovereign to creat Peers, as well in Time of Parliament as at any other Time, and the Exercise of this Branch of the Prerogative is declar'd in the Preamble of all Patents of Honour, to proceed *ex mero motu*, of mere Grace and Favour; nor are the Warrants for such Patents ever communicated to the Privy Council or Treasury, as those of some other Patents are, and therefore as High Treasurer or Privy Counsellor, he cou'd not have any Knowledge of them; nevertheless, if her Majesty had acquainted him with her Intentions, and ask'd his Opinion whether they were proper Persons to be promoted to that Dignity, he believes he shou'd have approv'd her Majesty's Choice, and does not apprehend he should have been guilty of any Breach of his Duty, or violation of the Trust reposed in him, since they were all Persons of Honour and distinguish'd Merit, and the Peerage thereby was not greatly increas'd, considering some of them wou'd have been Peers by Descent, and many Titles of Honour were lately extinct: And the Earl believes many Instances might be given, where this Prerogative had been exercised by former Princes in as extensive a Manner, particularly by *Henry VIII.* King *James I.* and his late Majesty King *William*; concluding, That in the whole Course of his Life he had always lov'd the Establish'd Constitution; and, when he had the Honour to be in Employment, had done his utmost to Preserve it.

In Answer to the first additional Article, he saith, That in *January* 1710. an Expedition was projected, for making a Conquest of the City of *Quebeck* in *Canada*, &c. which he not thinking feasible at that Time, he express'd his Dislike of the Undertaking, and after that did not think it proper to appear at the Meetings where it was concerted; but does not believe that Expedition was set on foot with any Design to promote the Interest of the *French* King, weaken the Confederate Forces in *Flanders*, or to dissipate the naval Forces of the Kingdom. And when others of her Majesty's Council, better acquainted than he was with that Affair, did judge it practicable, he did not think it proper, upon the Strength of his single Judgment, further to oppose an Expedition which, if it had succeeded, would have given a sensible Blow to the Settlements and Trade of *France* in *America*; and he is satisfied, that those of her Majesty's Council, who did approve the Expedition, acted with a sincere Desire for the publick Good; and the ill Success of it might be chiefly owing to contrary Winds, and other unforeseen Accidents; nor does he believe the common Enemy receiv'd any Advantage by the detaching those Forces from *Flanders*, to serve in this Enterprize, because her Majesty's General had Orders to supply their Places with other Troops, if he judg'd it necessary; that the Sum of 28000*l.* was demanded at the Treasury in *June* 1711. on Account of Arms, Accoutrements, and Merchandize, said to be sent on the said Expedition; but he was so far from advising the same should be paid, that he put a Stop to it, till he had done all he could to examine into the Expenditure of the said Money; but not being able to discover any just Cause why it should not be paid, and receiving her Majesty's Orders for the Payment of it, he did countersign a Warrant for the Payment of the same. And whatever Suspicions he might entertain in his own Mind, he did not upon Examination find there was sufficient Proof to justify the laying them before the Parliament. And though the Papers relating to that Expedition were laid before the last, and have been all along in the Power of the present House of Commons, he hath not heard that any Fraud has been made out in that Affair; and he hopes it will not be imputed to him

His Answer to
the first additional
Article.

as a Fault, if he had used his Credit to keep the House of Commons from examining this Affair in that Juncture, when by an unseasonable Enquiry, before proper Proof could be had, the Fraud, if there were any such, would be likely for ever to escape unpunish'd. But he denies he ever exercised, or had any arbitrary Power or Influence, either in the Privy Council, or the great Council of the Nation, or design'd to prevent Justice being done to the Queen or Nation. And the said Earl is not conscious, that by any Letter or Memorial to her Majesty, he hath acted contrary to his Duty; but says, it would be a Matter of particular Hardship, inconsistent with the Rules of Government, and without Precedent, if the most secret and intimate Papers and Letters wrote to her Majesty by her special Command, and for her private Perusal, should be imputed to any one as a Crime; and if a Quotation from such Letters could be alledg'd against the Earl, he doubts not but there might appear from her Majesty's other private Papers, what would justify him in many of the Particulars with which he is charged.

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II. In Answer to the second additional Article, he admits, That in *October*, 1711. her Majesty did sign a Warrant, directed to him, then High-Treasurer, for the Payment of 13000*l.* to *John Drummond Esq;* and that in Pursuance of the said Warrant, the said Earl did sign a Warrant for the Payment of the said 13000*l.* but takes the Words [*for special Services of the War*] to have been inserted by Mistake of the Clerks; and he believes the Clerks of the Treasury know, that the Moneys which arose from the Sale of Tin were the Queen's proper Money, and not appropriated to the Use of the War. And the said Earl having been acquainted with the Services the said Mr. *Drummond* had perform'd, by Order of the late Earl of *Godolphin*, in borrowing Money upon Tin at a low Interest, the Earl did ask Mr. *Drummond's* Consent, that a Sum in Tin-Tallies might be struck in his Name; and with his Consent did direct, that Orders, amounting to the Sum of 13000*l.* should be charg'd in the Register of the Exchequer, on the Monies arising by the Sale of Tin, in the Name of the said Mr. *Drummond*, who afterwards indors'd the said Orders at the Earl's Request, and left

left them in the Treasury; but doth not acknowledge that the said Orders and Tallies came to his Hands, or were dispos'd for his Use. But in order to give a true State of this Affair, the Earl says, that upon his first attending the Queen after he was wounded, she was pleas'd to tell him, She design'd him a Sum of Money; upon which he represented the bad State of the Civil List; and though her Majesty often afterwards ask'd him, why he did not find a Way for receiving the Money she intended him, he made no Step towards it for near six Months; when she told him, she was resolv'd to have it done; and as in Matters of Bounty she had made use of Tin-Tallies for other Persons, she was pleas'd to mention them herself, and order'd Warrants to be prepar'd for the Sum she intended him; and the said Tallies and Orders were struck in Mr. *Drummond's* Name; and from that Time the same were kept under the Earl's Direction, and for his Use. And the said Earl was advis'd, that nothing further was requisite to be done, for securing his Interest in the said Tallies, till an Accident happen'd, which made it necessary, for further Security, to have the said Warrant as a Declaration of Trust, and accordingly such a Warrant was sign'd by her Majesty, directed to the said Mr. *Drummond*, (wherein is a Recital, that her Majesty gave the said Sum of 13000*l.* to the Earl, in Consideration of his Services and Sufferings in her Service, and mentions the Attempt made upon his Life by *Guiscard*;) and he believes the said Warrant was drawn by Mr. *Lowndes*, Secretary of the Treasury; and by what Means the same was omitted to be enter'd in the Treasury, he knows not; but on hearing there was a Discourse about the said 13000*l.* he sent a Copy of the Warrant to the Officers of the Treasury, without signifying any Design to have it enter'd, well knowing it receiv'd its Authority from the Sign Manual, which wanted no additional Force from any Entry in the Treasury Books. And the said Earl saith, That the said Grant, according to the Discount on those Tallies at that Time, amounted to 10000*l.* or thereabouts, for which he acknowledges the great Bounty of her Majesty; but observes, that much larger Grants have been made to other Ministers of State, while the Necessities of the Crown have been

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equally

equally pressing : And the Earl saith, that in this, or any other Part of his Administration, he never was guilty of any Corruption, or Breach of Trust ; but that he managed the publick Treasure in the most frugal Manner ; and in every Employment to which he was called, he was always contented with the accustomed Profits ; that he never made any Advantage by the Disposál of Places in his own Gift, or by the Recommendation of Persons to her Majesty ; nor did he, in or out of Place, ever receive any Pension from the Crown ; that as he came with clean Hands into her Majesty's Service, so he went out of it, not only with clean, but almost empty Hands, having spent therein most Part of the Profits of the Places he enjoy'd ; so that notwithstanding this Bounty of the Queen's, he could with great Truth affirm, that his private Fortune had received a very inconsiderable Addition by the Employments he held.

III. In Answer to the third additional Article, saith, That *Matthew Prior* Esq; being sent by her Majesty to the Court of *France*, Warrants were sign'd in the usual Form for Payment of several Sums of Money to him, between the 27th of *August*, 1712. and the 10th of *July*, 1714. amounting to 12,360 *l.* and the said Sums were paid, pursuant to the Authority the Earl received from her Majesty, according to his Duty. He saith, he doth not know, that by any Law there ought to be certain Allowances for the Maintenance of Ambassadors, and other publick Ministers abroad ; but that her Majesty was at Liberty to vary such Allowances as she thought fit ; and believes, there are Instances of Ambassadors and Plenipotentiaries, who have been allow'd 1500 *l.* for their Equipage, 100 *l.* a Week for their ordinary Entertainment, and 1600 *l.* for Extraordinaries, besides farther Sums for special Services ; and if Mr. *Prior* had been paid on that Foot, he would have been entitled to a greater Sum from the Crown. He saith Mr. *Prior* was sent into *France* to carry on the Negotiations of a General Peace ; but denies he was a Creature of the Earls, or that he advised her Majesty to send him as her Plenipotentiary to the *French* King without the Privy of the Allies, or to promote any dangerous Practices with the Ministers of *France*, or that he combin'd with Mr. *Prior* to defraud

fraud her Majesty under Colour of that Employment, or that he gave him an unlimited Credit, as charged in this Article. He saith, that *Thomas Harley* Esq; having been twice sent by her late Majesty to the Court of *Hanover*, the Earl, then High Treasurer, did pay him 5560 *l.* by her Majesty's Authority, according to his Duty, out of the Moneys appropriated to the Civil List; and if Mr. *Harley* had been paid in Proportion to Allowances made to Ambassadors, it would have amounted to a greater Sum: And denies that he ever entered into any Combination with him, or any other Person to defraud her Majesty. Vol. vi. p. 140.

IV. In Answer to the fourth additional Article he denies, that he ever held any Correspondence with *Mary* the Consort of the late King *James II.* or ever intended to promote the Interest of the Pretender: Nor does he believe, that *Gualtier* was employed as an Agent between the Ministers of *Great Britain* and *France*, in transacting any Affaires relating to the Pretender; nor did the said Earl ever undertake to procure the Payment of the yearly Sum of 47,000 *l.* or any other Sum to the Use of the said Consort, during her Life; but the said Earl admits that the late King *James II.* did by Letters Patents, dated the 28th of *August*, 1685. grant to *Lawrence* Earl of *Rochester*, &c. divers annual Sums, amounting to 37,328 *l.* 13 *s.* 7 *d.* payable out of the hereditary Excise and Post-Office, to hold to them and their Heirs, during the Life of the said Consort, in trust for her; and by other Letters Pattents, dated the 3d of *December*, 1686. did grant his said Consort a Pension of 10,000 *l.* during her natural Life; whereby the hereditary Excise, &c. became chargeable with the said yearly Sums; and he admits the several Acts of Parliament mentioned in this Article; but says, there is a general saving in them of all Persons, Rights, and Claims to, or out of the said Revenues: And he admits the other Act for raising 500,000 *l.* for the Payment of the late Queen's Debts, &c. But he saith, he hath heard that the said Consort of the late King *James II.* esteeming herself entitled to the abovesaid Annuities, did authorize the said *Gualtier* to demand and receive for her Use all Sums of Money, which from *Luby-Day*, 1713. were become due upon them; and that *Gualtier* thereupon applying

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plying himself to her late Majesty, she sign'd a Warrant to the Earl, then High Treasurer, to the Effect in the Article mentioned; and that he did thereupon direct two several Warrants to the Auditor of the Receipt of the Exchequer to the Effect in the said Article set forth: And as he knew that the Jointure of the said Consort had been confirmed by Act of Parliament, and that by some private Article at the Treaty of *Ryswick*, Provision had been made in relation to it, and the Legality of the Demand not being doubted by her Majesty's Counsel at Law, the Earl thought it his Duty to pay Obedience to it; and being a Debt, thought himself sufficiently authoriz'd to pay it out of the said Sum of 500,000 *l.* raised for the Payment of her Majesty's Debts. He acknowledges also, that the said *Gualtier* coming into *England* with Letters of Credence from the *French* King, her Majesty was pleas'd to direct a Present to be made him, as was usual to publick Ministers; and she was the rather induced to it, because the said *Gualtier* had been instrumental with the *French* King in obtaining the Release of the poor Protestants who had suffered on Board the Gallies on Account of Religion: And her Majesty did sign a Warrant directing the Payment of 1000 *l.* to *Daniel Arthur*, in this Article mentioned, to the Intent it might be paid to the said Monsieur *Gualtier*, on the Account aforesaid; and he believes the Money was paid accordingly.

V. To the fifth additional Article he answers, that he believes a Person stiling himself *Lilest*, or *Lawless*, did, in 1712 or 1713. come into *England* with Letters of Credence to her Majesty from the King of *Spain*, to treat about carrying *British* Merchandizes to the *Spanish West Indies*; and that before his Return to *Spain*, her Majesty order'd 1000 *l.* to be paid him out of the Moneys appropriated to the Civil List, which the Earl in Obedience to such Orders paid accordingly: But he believes that when the said *Lawless* was admitted to the Queen's Presence, he was generally thought to be a natural *Spaniard*, and from the Advantages of the Licenses he brought for carrying the *British* Merchandizes to the *West Indies*, he expected a much larger Present: However, the Earl denies; that he was informed before the Arrival of the said *Lawless*, of his coming
hither

hither ; or, after his Arrival, did see him, or know of his being here before he was introduced to her Majesty, it being usual for publick Ministers to be introduced by those Servants to whose Office it belongs, without consulting any other Minister of State therein ; and it appeared when this Matter was before the House of Peers, that the noble Lord who introduc'd the said *Lawless* to the Queen, did not then know he was not a Native of *Spain* ; and it was a long Time after he was introduc'd, before the Earl knew he was not a natural *Spaniard* ; though after he had remain'd a considerable Time in *England*, the Earl was inform'd he was a Native of *Ireland*, and departed out of that Kingdom in his Youth, and had since been in the *Spanish* Service ; but did not know the said *Lawless* had been guilty of High Treason, or served in Arms against the Crown : And the said Earl denies that he advised her Majesty to sign a Warrant for Payment of the said 1000 *l.* to *Daniel Ar-*

thur, that was intended for the said *Lawless*, or gave any Directions for the Payment thereof contrary to her Majesty's Intentions. And the Earl admits that some other Sums of Money, amounting in the whole to 915 *l.* were paid in Satisfaction of Moneys advanced to the said *Lawless*, in part of what was agreed to be advanced to his Catholick Majesty on the *Asiento* Company ; but denies that he directed the Payment of any other Money, whatsoever, out of the Treasury to the said *Lawless*, or knew of any, except the 1000 *l.* above specified ; that he never advised the introducing, or treating with the said *Lawless*, under the feigned Name of *Don Carlo Moro* ; or that he should be received at all as a publick Minister here : He denies that he had the least Knowledge that the said *Lawless* had ever been Minister or Agent for the Pretender at *Madrid* ; or had the least Suspicion that he was sent into *England* to promote the Interest of the Pretender ; nor was he conscious he had done any Thing to expose the Person of her sacred Majesty, countenance any Emissary of the Pretender, or encourage his Adherents to the Danger of the Protestant Succession in the House of *Hanover* ; but is persuaded his Conduct is so well known in that respect, as to need no further Justification ; but if it should, he is able to produce such Proofs of it, as are the best Authority in the World for his Vindication.

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VI. In Answer to the sixth Article he saith, he hath been informed that Instructions in Writing were given to *Milford Crow* Esq; about the 7th of *March*, 1705. reciting, That her Majesty having been inform'd that the People of *Catalonia* were inclined to cast off the French Yoke, and return to the Obedience of the House of *Austria*, and that her Majesty desiring to improve that Disposition in them, made choice of the said Mr. *Crow* to treat with the *Catalans* (or any other People of *Spain*) on that Subject; and that he was impower'd to give them Assurances of her Majesty's utmost Endeavours, to procure the Establishment of such Rights and Immunities as they formerly enjoy'd under the House of *Austria*; and that Instructions were also given to the Earl of *Peterborough* and Sir *Cloudesley Shovel*, and a Manifesto publish'd to the Effect in the said Article set forth, but not by the Earl's Advice or Privity: And he believes it may be true, that Part of the Nobility, Clergy, and Inhabitants of *Catalonia* and *Majorca*, did afterwards acknowledge King *Charles* for their Sovereign, and join their Arms with her Majesty and her Allies against the present King of *Spain*; but what Motives induc'd them thereto, he doth not know: He acknowledges also, that for some Time the Arms of the Allies in *Spain* were attended with great Success, in which the Bravery of the *Catalans* appear'd, and the Confederates twice enter'd the Capital City of the Kingdom; by which signal Conquests, and the great Supplies that had been granted by the Parliament of *England* for their Assistance, that People were under the highest Obligations of Gratitude to her Majesty; but the Advantages of those Successes being lost, her Majesty found the Burthen of that War very heavy on her Subjects, the Conquest of *Spain* for the present Emperor impracticable, and after the Accession of the Empire, and Descent of the hereditary Countries to him, esteem'd inconsistent with the Interest of many of the Allies; and therefore thought it necessary for the Good of her People, and the Tranquility of *Europe*, to enter into Negotiations for a general Peace: But he denies he ever conspir'd to subject the *Spanish* Monarchy to the House of *Bourbon*, or the Destruction of the *Catalans*, or advis'd that the Lord *Lexington* should

acknowledge the Duke of *Anjou* King of *Spain*, before any Negotiation of Peace was set on Foot in Form of Law. On the contrary it will appear, that her Majesty used her best Endeavours for obtaining the Liberties of the *Catalans*; and that the Lord *Lexington* was directed to insist thereon peremptorily and absolutely; nor were any Orders ever sent him to recede from that Demand; nor did he desist from making the utmost Efforts for obtaining them. And if from any Measures of the *Catalans*, or of his Imperial Majesty, or from any other Cause, her Majesty's Endeavours had not their full Effect, he conceives it could not be imputed to any Neglect in her Majesty, or Want of Duty in the Earl. He believes the Emperor did enter into a Convention for the Evacuation of *Catalonia*; and that her Majesty was prevail'd on; out of her Affection to the Emperor, to become one of the Guarantees thereof; but denies his Imperial Majesty was necessitated by any Practices of the Earl to make such Convention, and knows not why his Imperial Majesty, whom it most concern'd; omitted in that Convention to make express and positive Stipulations for the Liberties of the *Catalans*. If it proceeded from any Dependence on her Majesty to interpose in their Behalf, he is confident her Majesty's best Offices were employ'd; and repeated Instances were made by her Ministers, in the most pathetick Manner, to obtain for them the Privileges they desir'd; and that her Majesty actually did obtain for them a perpetual Amnesty and Oblivion of all that was done in the late War, the full Possession of all their Estates and Honours, and a farther Grant of all the Privileges, which the Inhabitants of both *Castiles* (who of all the *Spaniards* are most favour'd by the Crown) enjoy'd, or might enjoy, whereby the *Catalans*, if they obtain'd not all the ancient Privileges they pretended to receive, had, however, in lieu of them, the Advantage of trading directly to the *West Indies*, and other Privileges, to which they were not before entitled. And 'tis probable the Queen had obtain'd for them the ancient Privileges and Liberties in the largest Extent, if they had waited the Event of her Interpositions in their Favour, and not determined to carry on the War by themselves against King *Philip* after the Emperor had sign'd the Convention for evacuating their Country,

try; which incens'd the King of *Spain* to the last Degree, and was look'd upon by him as the most obstinate Rebellion: He believes her Majesty might think herself oblig'd, by being Guarrantee to the said Convention, to send Sir *James Wisbart* into the Mediterranean with a Squadron of Men of War; but knows not what Orders or Instructions were given him; and the Earl conceives he cannot in Justice be charg'd with any Consequences from the *Catalans* Refusal to comply with the King of *Spain* upon the Terms her Majesty had obtain'd for them.

And he says, he is not guilty of all or any of the Matters contain'd in the said Articles, in Manner and Form as they are therein charg'd against him; and hopes their Lordships will impute any Defects there may be in his Answer to the ill State of Health he has long labour'd under, and be induc'd to make all further due Allowances in his Favour, from the following Considerations.

The Conclusion
of the Earl's Answer.

Most of the Articles relate to the Negotiations of Peace concluded at *Utrecht*, and he must be under great Difficulties in giving a particular Account of such a Variety of Facts as are contain'd therein: That several of these Facts concern Transactions with Foreign Ministers, who cannot be produc'd as Witnesses for him: That where the Interests of se-

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veral Parties separate from, and perhaps contrary to each other, are to be adjusted, great Secrecy and Address are requir'd; and in Treaties between Enemies, such Terms are often propos'd and Arguments us'd, as carry a different Appearance from the real Intentions of those that treat; so that it must be very difficult to set every Thing in a true Light that pass'd at those Negotiations, especially since the Account of those Transactions, and the Reasons on which they are founded, cannot be clear'd but by inspecting the entire Series of Letters and Papers which pass'd during the Continuance of those Transactions, which are in the Possession of the House of Commons; nor could he be indulg'd with Copies of those Papers when he apply'd for them.

That the House of Commons, by being possess'd of those Papers, have a fuller View of all the secret Steps of that Negotiation, than was ever imparted to a House of Parliament, and all possible Advantage

Advantage in forming the Charge against him; whereas the Earl, wanting the Assistance of those Papers, is under inconceivable Disadvantages in making his Defence, and hopes their Lordships will not expect any such Proofs of his Innocence as can only be drawn from a Perusal of them.

He submits it also, whether in a Negotiation, where the Advice of all those in high Trust about her Majesty was requir'd and taken, he can with any Colour of Equity be made answerable for advising and conducting the whole.

He observes further, That every Thing with which he is charg'd was done in the Reign of a Princess now deceas'd, who having a perfect Knowledge of the State of Affairs at that Time, cou'd have been the only competent Judge whether she was fraudulently dealt with, lead into ill Measures which she did not direct or approve, or made an Instrument of sacrificing her Kingdoms to the Enemy. It was with great Grief he observ'd such Things suggested, as seem'd to reflect on the Character of that excellent Queen; but he assures their Lordships, that every Thing relating to the Peace was communicated to her late Majesty, and maturely considered by her before any Thing was determin'd thereupon; nor was any Step taken but in Pursuance of such Determination.

He said, That the Queen had nothing more at ^{He justifies the} Heart than to procure her People the Blessing of ^{late Queen's} Peace; and when she had obtain'd it, she had this ^{Conduct.} Satisfaction, that she had taken the most proper Measures to justify her Conduct both to her Allies and her own Subjects: That upon a Review of her Actions it wou'd appear, and had in Part appear'd by this Answer, that as her Majesty enter'd further into the War than she was oblig'd by any Treaties in being at her Accession, so she contributed more Men and Money towards the carrying it on afterwards, than she was engaged to provide by any subsequent Treaties: That her earnest Desires of Peace being twice frustrated, when such Conditions might have been obtain'd as wou'd have answer'd all the Ends for which the War was declar'd, and our Successes and Victories produc'd only an annual Increase of the Charge to *England*, without any further Assistance from the Allies, and these

Kingdoms were exhausted to such a Degree, (notwithstanding the great Advantages obtain'd by her Arms,) that she was not able to continue the War upon the Foot it then stood a Year longer; and her Allies refus'd to continue it upon those equal Conditions they were oblig'd to by their Treaties; she was constrain'd, in Compassion to her People, to hearken to the Overtures of Peace made her by *France*, without relying longer on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carry'd it on some Time under that Prospect, without reaping the Benefits propos'd, and thereby, perhaps, rais'd the Glory of her Arms; but she cou'd not think this a sufficient Recompence for the increasing Miseries of her People; and therefore resolv'd to lay hold of the Opportunity that was offer'd her, of ending the War by a Safe and Honourable Peace; and those who were then employ'd in her Majesty's Councils, thought themselves oblig'd to second her good Intentions.

It was the Saying of the Duke of *Parma*, as great a General as the last Age produc'd, when *France* was distracted with Civil Wars, and in a much lower Condition than she was at the Conclusion of the last Peace, at a Time when *Spain* was at the Height of its Glory, and the Duke at the Head of a Spanish Army, supporting one of the contending Parties, That if *France* was to be won only by reducing its Towns, the World would be sooner at an End than such a War. The Queen seem'd at that Juncture with better Reason to frame the like Judgment; and it was a great Instance of her Wisdom to think of securing a Peace, while she appear'd able to carry on the War, and before the exhausted Condition of her Kingdom, and the Impossibility of maintaining so disproportion'd an Expence, was discover'd by her Enemies. And the Queen enter'd upon the Negotiation with Circumstances of great Honour to herself, *France* applying to her first, and previously owning her Title, and acknowledging the Protestant Succession; two principal Grounds on which the last Declaration of War was built.

And as by the Terms of this Peace all reasonable Satisfaction and Security, due to the Allies by Treaty, were obtain'd for them, so larger Advan-
tages

tages were procur'd to *Britain* in particular, than ever had been demanded before in any Treaty between this and any other Foreign State; the Kingdoms of *France* and *Spain* were effectually separated, the Ballance of Power upon a better Foot than it had been for an hundred Years pass'd, the Protestant Succession secured, and our Trade and Manufactures in a flourishing Condition.

And as the Terms of Peace were advantageous to *Great Britain*, it was approved by both Houses of Parliament; solemn Thanks were render'd to God for it here and in the United Provinces; and her Majesty receiv'd on this Occasion the hearty Congratulations of her People from all Parts of her Dominions.

This being a true Representation of the Case, the Earl does not see how he, or any others in her Majesty's Service, can justly be charged with betraying the Interests of their Country, or the Allies, by negotiating that Peace so acceptable and advantageous to these Kingdoms; and if the Peace itself be not condemn'd, and it be not charg'd as a Crime that he advis'd her Majesty to conclude that Peace, he conceives it an extraordinary Hardship that rough Draughts and Essays towards a Peace, leading to an End that was just and profitable, shou'd be brought to form so many distinct Heads of Accusation against him: For suppose any improper Steps had been taken, which he does not admit, yet if Things were at last conducted to a right Issue, and ended in an Honourable and Advantageous Peace, there can be no just Ground to find fault with the Measures us'd to compass it, because they seem'd before the Accomplishment to have a different Tendency, especially if it were consider'd, that scarce any Peace had been made by a Confederacy, where less Reason had been given to complain among the several Parties: And therefore he hop'd that no Steps taken for obtaining a Peace, approv'd by former Parliaments, wou'd be accounted criminal by any succeeding Parliament, unless it appear'd that those Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage.

And as a farther Proof that the Queen's Ministers acted with upright Intentions, and were not conscious of any Failure in their Duty, the Earl observes

they never attempted to cover their Actions from publick Censure by any Pardon or Indemnity.

Vol. vi. p. 146.

He observes further, That in the Articles which regard the Negotiations of Peace, the Charge is not founded on the Breach of the Laws of *England*, but chiefly on the supposed Infraction of certain Treaties with foreign Princes and States; and he conceives that such Infractions being cognizable by the Laws of Nations only, and not by those of the Realm, are not wont to be examin'd here at Home, and prosecuted as criminal, but upon the Complaint of the Prince or State pretending to be injured; but he does not find any such Complaints have been made since the Peace by any of the Powers concerned. He submits it to their Lordships, whether the Emperor having had all reasonable Satisfaction made him for his Pretensions to the *Spanish* Monarchy, according to the Terms of the Grand Alliance, could have any just Reason to complain of the Queen's Ministers, or those of her Allies, for concluding a Peace without insisting on his Account on impossible Conditions, especially when no Offers were made to reimburse her Majesty any Part of those vast Sums she had already expended in Support of his Pretensions; whilst he fail'd of supplying his Quota almost in every Part of the War, notwithstanding the great Acquisitions that had been made for him. But if the Emperor, or any other of the Allies, had any just Ground of Complaint, still he insists it ought to have been signified to the Queen; who, if she had found any of her Servants blameable, might have punished them as their Offences deserved: But nothing of this kind appearing, he submits it, whether the Silence of those Powers doth not carry in it a strong Presumption, either that they had no real Ground of Complaint, or did not look upon the Queen's Ministers to be blameable on that Account: And therefore begs Leave to express his Concern, that he should be charged as a Criminal by the Laws for supposed Breaches of Treaties with Foreign States, which never were complained of by those States themselves during the Life of her Majesty.

He observes also, That wherever he is charged with carrying on a private Negotiation, it is with regard only to the States General, though all the other Allies

lies had a like Right to a Communication of Councils, and her Majesty was under no Obligation to act more in Concert with them than with any other.

He allows it to be reasonable, indeed, that the Queen should act in a closer Conjunction with *Holland*, than with the other Allies; because next to *Britain*, she bore the greatest Share in the Charge of the War: But then it must be allow'd that the States being more interested in the Success of the War than *England*, it was reasonable the Queen should take Care of the Interest of her Kingdoms some other Way. And since the Advantages she demanded from the Enemy were such as she might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally to them, as it was for her and the States to concert their mutual Interests together without the Participation of the other Allies; which being done without a Design to defeat the main Ends of the Alliance, was never complained of by any of the Confederates.

And the States were so far from protesting against her Majesty's Conduct, in concerting previously with *France* the particular Interest of her own Kingdoms, that they offered several Times to lead the Way in the most difficult Part of the Treaty, if they might have had a Share in the *Assiento* Contract, and the Trade to the *Spanish West Indies*.

Vol. vi. p. 147.

The Earl concludes with Protestations of his Innocence: He says, that in all Affairs of State he had the Honour to be employed by her late Majesty, he ever acted according to the best of his Judgment, with sincere Intentions to serve the Publick, and without any View to his own private Advantage: That he never sought or desired any of the great Employments he held, but came into them by her Majesty's special Command, and had served her with the utmost Zeal and Faithfulness; and as he continued in those Stations many Years, it was with Wonder and Pleasure he observed her Majesty's whole Thoughts and Time divided between her Duty to God and her Love to her People, whose Prosperity she preferred to her own Ease, and often hazarded her Health and Life to procure it: That he found it the most effectual Way to recommend himself to her good Opinion, to act upon the same Principles of Justice and Love

to his Country that she did; and as she abhorred the Thoughts of every Thing that might be burthensome or injurious to her People, so she expressed herself with the greatest Satisfaction and Delight, when she reflected on the Advantages she had obtained for her own Subjects, and the Quiet and Repose she had gained for *Europe* by that honourable Peace; for which as the present Age blessed her, future Generations would adore her Memory.

To the Earl's Answer the Commons reply'd,

The Commons
Reply.

THAT it was with Astonishment they observed, that the Earl, instead of giving a pertinent Answer to the heavy Charge brought against him, had presum'd to deny his advising and being concern'd in any Matters of State charged on him in the Articles, though confessed to be done at a Time when he was notoriously Prime Minister; and had added a malicious Libel, laying the whole Blame upon the late Queen, whom he had imposed upon, intending thereby to reflect on the Honour and Justice of the House of Commons, and cast an *Odium* on their Proceedings, as tending to asperse her Majesty's Memory: But if it was possible to add to the Load of Guilt he lay under, this base Attempt to defame his Royal Mistress must bring such a Weight of Infamy upon him, as might justly provoke the Commons to demand immediate Justice, were they not sensible that the Treasons and other Crimes he stood impeached of, and the Necessity of bringing him to speedy and exemplary Justice, required that all Occasions of Delay should be avoided: And not doubting that the Lords would in due Time vindicate the Honour of the late Queen, and of the Commons, they did aver their Charge against the said Earl to be true; and that he was guilty of all and singular the said Articles in such Manner as he stood impeached, and were ready to prove their Charge against him.

After the reading of the Articles, Answer, and Reply, the Lord High Steward addressed himself to the Earl of *Oxford*, the Prisoner at the Bar. He said,

Earl Comper,
Lord High Steward's
Speech to
the Earl.

IT was usual to say something to Persons in his Lordship's Condition, partly to exhort them to a reason-

reasonable Confidence in the Honour and Justice of their Judges, their Peers, and partly by Way of Direction to assist them in their Conduct in the Course of the Trial ; but considering the great Offices his Lordship had born in the State, and his long Experience in Parliamentary Proceedings, it was unnecessary to say any Thing to him on that Subject.

He proceeded, therefore, barely to acquaint him with the Orders of the House of Lords, in relation to the Tryal.

1. That his Lordship, and all other Persons, must address their Speeches to the Lords in general, and not to any Lord in particular. Vol. vi. p. 148,

2. That his Lordship's Counsel might be present, in order to be heard to any Point of Law that should arise on either of the Articles for High Treason ; and that he might make his full Defence by Counsel on the Articles for High Crimes and Misdemeanors, as well on Matters of Fact as of Law.

3. That his Witnesses were to be examined upon Oath, as well to the Articles of High Treason, as those for High Crimes and Misdemeanors.

Then the Lord High Steward leaving his Chair, and going down to the Table for the Advantage of Hearing what was said at the Bar, he directed the Commons to proceed.

Mr. *Hampden*, one of the Managers, being appointed to open the Articles, said,

THE Commons of *Great Britain*, out of indispensable Duty to their Country, and Zeal for the Preservation of the Liberties of *Europe*, had brought to their Lordships Bar *Robert Earl of Oxford*, late High Treasurer, and a Privy Counsellor of this Kingdom, charged with the highest Crimes and Misdemeanors against the Person, Crown, and Dignity of his Sovereign, the Peace and Interest of the Kingdom, and with the Breach of the several Trusts reposed in him. *[Here he gave a short Abstract of the several Articles already recited, and then goes on.]* Thus your Lordships have a View of the Guilt in which the Treasons and other Crimes committed by the Prisoner have involved him : They had seen him abusing and betraying the Honour of his

Mr. Hampden, a Manager, opens the Articles.

Vol. vi. p. 149.

Royal Mistress, into whose Favour he had insinuated himself, for the most destructive and wicked Purposes; they had found him dividing and weakening the Allies, betraying their Counsels, traiterously giving up their Fortresses, their most flourishing and wealthy Countries to the Common Enemy in Time of open War, and contriving and effecting the Dissolution of the most glorious Confederacy that was ever formed in Defence of the Protestant Interest, and the Liberties of *Europe*; they had found him attempting to deprive these Kingdoms of the most auspicious Government of his present Majesty, the greatest and best of Princes, and to defeat us of our happy Prospect of lasting Felicities in a long Succession of Protestant Princes in the Royal Line; on the Continuance of which Succession, next under God, all that was dear and valuable to us depended.

Vol. vi. p. 150.

The Commons did justly resent and detest the Reproach brought upon the Faith and Honour of the Nation by that great Evil Minister at their Bar; but promised themselves their Lordships would ever be a Terror to all Evil Ministers, how great soever, and not fail to do Justice to their injured Country upon all perfidious Counsellors, who lay in wait to destroy their Religion, Laws, and Liberties.

Sir Joseph Jekyll.

Sir Joseph Jekyll, another of the Managers, beginning to open that Part of the Charge contained in the first Article, the Lord *Harcourt* moved to adjourn to the Chamber of Parliament; and the Lords adjourned accordingly; and the following Question was put, viz.

The Lords adjourn to their House.

That the Commons be not admitted to proceed, in order to make good the Articles against Robert Earl of Oxford and Earl Mortimer for High Crimes and Misdemeanors, till Judgment be first given on the Articles of High Treason.

Which being resolv'd in the Affirmative, the Lords returned to *Westminster-Hall*; and the Lord High Steward acquainted the Managers for the Commons with the said Resolution.

Sir William Thompson thereupon said,

Sir William Thompson, a Manager for the Commons.

THAT they conceived it to be their undoubted Right to proceed in their own Method; and that this Resolution might be of such fatal Consequence

quence to the Rights and Priviledges of the Commons, that they could proceed no further without resorting to the House for their Direction.

[Whereupon the Lords adjourned to the Chamber of Parliament, and the Lord the Prisoner was remanded to the Tower, and ordered to be brought to the Bar again the next Morning.]

Tuesday, June 25. 1717.

The Lords being met in the Chamber of Parliament, a Message was sent to the Commons to acquaint them, that their Lordships were about to go to *Westminster-Hall*, to proceed farther on the Trial of the Earl; but the Commons sending them a Message, that they desired Time to search Precedents, the Lords agreed not to proceed in the said Trial till the Thursday following.

Thursday, June 27. 1717.

The House of Lords being met, received a Message from the Commons, desiring a Conference. Whereupon a Conference was appointed immediately in the Painted Chamber, and Managers named by the Lords. At this Conference the Managers for the Commons delivered a Paper to their Lordships of the Tenour following, viz.

The Commons desire a Conference with the Lords, which is agreed to.
Vol. vi. p. 151.

THE Commons having taken into their Consideration your Lordships Resolution, communicated to their Managers, relating to the Proceedings on the Trial of *Robert Earl of Oxford* and *Earl Mortimer*, and being desirous, as far as in them lies, to maintain a good Correspondence with your Lordships, have desired this Conference, and have commanded us to acquaint your Lordships, That they conceive it to be the undoubted Right of the Commons to impeach a Peer either for High Treason, or for High Crimes and Misdemeanors, or, if they see Occasion, to mix both the one and the other in the same Accusation.

The Impeachment preferred against *Robert Earl of Oxford* and *Earl Mortimer* is one continued Accusation, consisting of High Crimes and Misdemeanors;

nors, and also of Charges of High Treason : The Facts on which the Articles preceeding those of High Treason are grounded, are laid together in Order of Time, and follow one another successively in the Manner they were committed.

As the Commons thought this the most natural Method for exhibiting the several Articles against the said Earl, they were all of Opinion, that they should proceed in the Proof of these several Facts after the same Method, since it is manifest that in laying open the Course of such a wicked Administration, the preceeding Parts of it give Light to those which follow ; and that the Proof of several Articles of the High Crimes and Misdemeanors would naturally lead to the Proof of those of High Treason.

Your Lordships received these several Articles of Impeachment without making any Exception against the Form in which they were exhibited ; the said Earl made his Answer to them in the same Order, and has no where insisted to be tried in any other Method ; so that the Commons are surpriz'd to find a Stop put to their Prosecution by an Objection which has never been started by the said Earl, and which your Lordships had given them so little Reason to expect.

To this must be added, that as the Commons only are Masters of the Evidence ; and as upon that Account they are best able to determine in what Method to proceed for the Advantage of the Prosecution, in the Event of which all the Commons of *Great Britain* are so highly concerned.

To which they further add, That they see no Reason but that your Lordships may as well invert the whole Order of the Articles, as prescribe to the Commons, those particular Articles on which they are first to proceed, which will necessarily produce such a Confusion both in the Facts and Evidence, as is by no Means consistent with that Clearness and Perspicuity in which the Commons think this Affair ought to appear.

The Commons upon examining Precedents, do find divers Precedents of Impeachments for High Treason and other High Crimes and Misdemeanors in the same Accusation ; and do not find that the Lords ever objected to such Proceeding, or ever gave Judgment upon any particular Article of an Impeachment

Impeachment, before the Commons had gone through and concluded their Evidence upon all the Articles, or so many of them as they thought fit; and the Commons are at a Loss to conceive what Arguments or Precedents can be brought to support the Resolution of your Lordships, to give Judgment upon one Part of the same Accusation, reserving the other Part for a subsequent Trial, as they are to know what your Lordships mean by admitting the Commons to proceed upon the Articles for High Crimes and Misdemeanors after the Judgment is given upon the Articles for High Treason, supposing the Judgment proper for High Treason should be given against the said Earl.

For these Reasons the Commons assert it as their undoubted Right to proceed on the Trial of *Robert Earl of Oxford* and *Earl Mortimer*, after the Method in which their Managers were proceeding when interrupted by your Lordships Resolution.

The Commons refuse to alter their Method of Proceeding.

Their Lordships, however, resolv'd to insist on their former Resolution, and order'd a Committee to prepare Reasons to be offer'd at a Conference in Maintenance of their said Resolution.

Friday, June 28. 1717.

The Lords being met in their House, the Reasons the Committee had drawn up for insisting on their former Resolution were read, and are as follow;

THEIR Lordships, in order to preserve a good Correspondence with the House of Commons, (which they shall always endeavour to do as far as lies in their Power,) have desired this Conference upon the Subject-Matter of the last Conference, and have directed us to acquaint you, That their Lordships judge it a Right inherent in every Court of Justice to order and direct such Methods of Proceedings as such Courts shall think fit to be observed in all Causes depending before them which can have no Influence to the Prejudice of Justice, and where such Methods of Proceedings are not otherwise settled by any positive Rule. The Power of Judicature on all Impeachments being a Right unquestionably inherent in their Lordships, and it not being determined by any positive

The Lord's Reasons for persisting in their Resolution.

positive Rule, whether the House of Commons may proceed to make good the several Articles exhibited for Misdemeanors, in such Order as they shall think fit, before they proceed to make good the Articles exhibited for High Treason; and there being no Precedent, where the Commons upon Trial of any such Impeachment attempted to proceed in the first Place to make good any of the Articles contain'd in such Impeachment for High Crimes and Misdemeanors, their Lordships considering the Nature of the Impeachment now depending before them, and the Method wherein the Managers for the House of Commons were beginning to proceed upon the Trial, to make good the first Article thereof, which is a Charge for High Crimes and Misdemeanors only, and also considering the very different Methods of Proceedings on an Impeachment of a Peer for High Treason, as well before, as upon the Trial thereof, and the Circumstances attending such a Trial, from the Proceedings on an Impeachment of a Peer for High Crimes and Misdemeanors, and the known Circumstances attending such a Trial, thought themselves oblig'd to come to the Resolution communicated to the Commons on the 24th instant, as well for the doing Justice in the Case depending before them, as for the preventing a new Precedent to be made on this Trial; in consequence whereof, a new and unjustifiable Form of Proceeding against a Peer, upon an Impeachment for High Treason and High Crimes might be introduc'd at his Trial upon those Articles, in which he is charg'd for High Crimes and Misdemeanors only, to the Prejudice of the Peerage of *Great Britain* in all Time to come, viz. the trying a Peer on Articles for High Crimes and Misdemeanors without the Bar, the detaining in Custody a Peer so accus'd, and repeated Commitments of him to the *Tower*, during the Time of such Trial, and subjecting a Peer to as ignominious Circumstances on his Trial on Articles for Misdemeanors, as if he were then on his Trial on Articles for High Treason; whereas a Peer on his Trial on Articles for Misdemeanors only, ought not to be depriv'd of his Liberty, nor sequester'd from Parliament, and is entitled to the Privilege of sitting within the Bar during the whole Time of his Trial. In all which Particulars the known Rule of Proceedings

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ings in such Cases may be evaded, should a Peer be brought to his Trial on several Articles exhibited against him on High Crimes and Misdemeanors, and for High Treason mix'd together, and the Commons be admitted to proceed, in order to make good the Articles for High Crimes and Misdemeanors, before Judgment be given upon the Articles for High Treason. Their Lordships have fully consider'd the Matters offer'd to them by the House of Commons at the last Conference, relating to the Proceedings against *Robert Earl of Oxford* and *Earl Mortimer*; and their Lordships are fully satisfied, that the Resolution they have taken and communicated to the Commons on the 24th instant is just and reasonable; and that the House of Commons are not put under any real Inconvenience thereby, in carrying on their present Prosecution. Their Lordships have commanded us to let you know, that they do insist on their said Resolution, viz. That the Commons be not admitted to proceed in order to make good the Articles against *Robert Earl of Oxford* and *Earl Mortimer* for High Crimes and Misdemeanors, till Judgment be first given upon the Articles for High Treason.

They insist, that the Commons shall not proceed on the Articles for High Crimes, till the Earl is try'd for High Treason.

The said Reasons having been deliver'd to the Managers for the Commons, at a Conference the same Day, the Earl of *Oxford* was order'd to be brought to his Trial in *Westminster-Hall* again the next Day.

Saturday, June 29. 1717.

The Lords being met in their House, receiv'd a Vol. vi. p. 153. Message from the Commons, to desire a free Conference upon the Subject-Matter of the last Conference. Whereupon the Lords resolv'd, That the Subject-Matter of the last Conference, concerning a Point of Judicature, determin'd by their Lordships after the Trial began, their Lordships did not think fit to give a free Conference on the Subject-Matter of the last Conference; and sent a Message to the Commons, to acquaint them with this Resolution.

Monday,

Munday, July 1. 1717.

The Lords being met in their House, receiv'd a Message from the Commons, desiring a Conference on their Lordships last Message; to which the House agreed. And at this Conference the Managers for the Commons deliver'd a Paper to their Lordships of the following Tenor, *viz.*

THE Commons having taken into Consideration your Lordships Message, *viz. That your Lordships did not think fit to give a free Conference on the Subject-Matter of the last Conference*, as was desir'd by the Commons; and they being still desirous, to the utmost of their Power, to preserve a good Correspondence with your Lordships, have asked this Conference, and have commanded us to acquaint your Lordships, That they are very much surpriz'd to find your Lordships deny a free Conference, after your Lordships had already agreed to a Conference desir'd by the Commons on the said Subject-Matter, and after your Lordships have on your Parts also desir'd a Conference on the same Subject.

That free Conferences are the most antient and establish'd Methods for adjusting the Differences that have at any Time arisen between the two Houses; and, as the Commons conceive, is the only Method to preserve a good Correspondence between them on such Occasions, which at this Time is of the highest Importance, because a Misunderstanding on this Account, would tend to defeat the Trial of the Impeachment of the Commons.

Vol. vi. p. 154.

That the Commons conceive, clearly, that the Subject-Matter of the last Conference is not a Point of Judicature, but a Point relating only to the Prosecution of the Commons, it having arisen before any Matter of Judgment had come before your Lordships on the Trial.

For which Reasons the Commons conceive, that your Lordships ought not to have denied them a free Conference upon the Subject-Matter of the last Conference.

The Lords, notwithstanding, persisted in their Resolution of denying a Conference on that Matter, and communicated this Resolution to the Managers
of

of the Commons at another Conference; and the same Day they sent a Message to the Commons, That they intended presently to proceed farther in the Trial of Robert Earl of Oxford in Westminster-Hall.

The Lords afterwards coming down to Westminster-Hall, the Prisoner was brought to the Bar; and the Commons not being present, Proclamation was made, That whereas Robert Earl of Oxford and Mortimer stood impeach'd of High Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the Name of themselves and of all the Commons in Great Britain, all Persons concerned were to take notice that he now stood upon his Trial, and they might then come forth in order to make good their said Charge.

The Lords proceeded in the Trial in the Absence of the Commons.

[Here the Lord Guilford moved to adjourn to the House above, and the Lords adjourn'd accordingly.]

Then the House being resum'd, it was propos'd, Vol. vi. p. 155, That Robert Earl of Oxford and Earl Mortimer be acquitted of the Articles of Impeachment, exhibited against him by the House of Commons for High Treason and other High Crimes and Misdemeanors, and of all Things therein contained; and that the said Impeachment be dismiss'd. And it was resolv'd, that the Question thus stated shou'd be the Question put in Westminster-Hall.

Then the Lords being return'd to the Hall, and Proclamation made for Silence as usual, the Lord High Steward put the Question in the Words above prescrib'd; and addressing himself afterwards to the youngest Baron he said, My Lord, your Lordship has heard the Question stated, What says your Lordship? Is your Lordship Content, or not Content? To which he answer'd CONTENT; and after him every Lord, when the Question was put, answer'd CONTENT, in their Order, without one dissenting Voice.

L. H. Steward. My Lords, Robert Earl of Oxford and Earl Mortimer is acquitted of the High Treason and other High Crimes and Misdemeanors, wherewith he stands charged, by the unanimous Vote of all your Lordships here present. Vol. vi. p. 156. The Earl is acquitted.

[Then

[Then the Earl of Oxford being brought to the Bar, the Lord High Steward pronounc'd the following Judgment.]

L. H. Steward. It is Consider'd, Order'd, and Adjudg'd, by the Lords Spiritual and Temporal in Parliament Assembled, that *Robert Earl of Oxford* and *Earl Mortimer* shall be, and is hereby acquitted of the Articles of Impeachment, exhibited against him by the House of Commons, for High Treason and other High Crimes and Misdemeanors, and of all Things therein contain'd; and that the said Impeachment shall be, and is hereby dismiss'd.

L. H. Steward. Lieutenant of the *Tower of London*, You are now to discharge your Prisoner.

[Then the Lord High Steward broke his Staff, and the Earl was immediately discharged at the Bar, the Lords adjourning to their House above.]

The House of Commons afterwards address'd his Majesty to except the Earl of *Oxford* out of the Act of Grace that was passing this Sessions, in which they were humour'd by the Court; but the Earl died in Peace in a good old Age, without any farther Prosecution. His Enemies had dispossest him and his Friends of their Posts in the Administration, by such Suggestions as we find in these Articles, and established themselves; After which, their Zeal for the Honour of the Nation and the Interest of *Europe* seem'd visibly to decline; they enter'd into the strictest Friendship with that very Nation, they affected so much to dread but a very little before; the French are become our very good Allies, and we are ready to refer our Differences with other Powers to their Umpirage.

The TRIALS of Major STEDE Vol. vi. p. 156.
BONNET, and Thirty three others,
at the Court of Vice-Admiralty,
at Charles-Town in South Ca-
rolina, for Piracy, the 30th of
October, &c. 5 Geo. I. 1718.

THE Court consisted of *Nicholas Trott Esq;* The Court of Vice Admiralty, Judge of the Vice-Admiralty, and Chief Justice of the Province of *South Carolina*, and *George Logan Esq;* *Alexander Paris Esq;* *Philip Dawes Esq;* *George Chicken Esq;* *Benjamin de la Conseiller Esq;* *Samuel Dean Esq;* *Edward Brailsford Gent.* *John Croft Gent.* Captain *Arthur Loan*, and Captain *John Watkinsson* his Associates; who being assembled on the 28th of *October*, and the King's Commission to *Nicholas Trott Esq;* Chief Justice, and the Commission from the Lord Palatine, and the rest of the Lords Proprietors, for holding the Court of Admiralty Sessions read, the Grand-Jury were call'd over, and sworn; to whom the Chief Justice gave a very long and learned Charge, at least in the Opinion Vol. vi. p. 157. of his *American* Audience; but because that Part of it, wherein he enlarges on the Laws against Piracy, may not be altogether so instructive and entertaining to the *English* Reader as it might be to the People of *Carolina*, I shall omit the Learned Part of the Charge, and take notice only of what is Historical, and may conduce to let us into a State of the Case.

He observes that the Inhabitants of that Province Vol. vi. p. 159. had of late felt the great Mischief of Piracy; That The Chief Justice Charge to the Grand-Jury. an infamous Pirate had the Assurance to lie at the Bar in sight of *Charles-Town*, their Capital, where he rifled several of their Ships, inward and outward bound, and then sent in his insolent Demands to them for such Things as he wanted, with Threats of murdering their People he had on Board him, if his Demands were not complied with; so that he did in a Manner put the Province under Contribution;

and the Success he met with, encouraged another of those Sea-Wolves to give them a Visit, and take their Vessels as they went in and out of the Harbour: That this had provoked the Government of *Carolina* to exert themselves; and they had fitted out a Force under the Command of Colonel *Rbett*, who fought the Pirates, and brought them Prisoners to that Place, where they were now indicted for their many Depredations on the High Sea: But in the Engagement with these Enemies of Mankind, many of their People had lost their Lives in discharge of their Duty to their King and Country, who fell by the Hands of these inhuman Wretches; which he hoped wou'd be one Inducement to them to find the Bill against the Prisoners.

Two Indictments found against the Prisoners.

The Grand Jury having found two several Indictments against the Prisoners, Part of them were brought to their Trials on the 30th of *October*, 1718. But Major *Stede Bonnet* having made his Escape out of Prison, and not then retaken, his Crew were try'd without him; and he was afterwards try'd singly on the 10th of *November* following.

Vol. vi. p. 161.

The first Indictment sets forth,

The first Indictment.

THAT *Edward Robinson, Robert Tucker William Scot, &c.* on the 2d Day of *August*, in the 5th Year of King *George*, by Force and Arms, upon the High Sea, in a certain Place call'd *Cape James*, alias *Cape Zulopen*, about two Miles distant from the Shore, in the Latitude of 39, did piratically and feloniously set upon, board, break, and enter a certain Merchant Sloop, called the *Francis*, *Peter Manwaring* Commander, putting the said *Manwaring* and others in Corporal Fear of their Lives; and then and there did piratically and feloniously steal, take, and carry away the said Sloop, and also twenty Hogsheads, three Tierces, and three Barrels of Rum, of the Value of 263*l.* 6*s.* 8*d.* current Money of the Island of *Barbadoes*, twenty five Hogsheads of Molosses, of the Value of 138*l.* 13*s.* 8*d.* current Money of the Island of *Antegoa*, three Barrels and three Tierces of Sugar, valued at 33*l.* of like current Money of *Antegoa*, two Pockets of Cotton, of the Value of 50*l.* and about sixty Weight of Indigo, Value 9*l.* one new Cable Value 50*l.* Sterling, nineteen *French*
or

or *Spanish* Pistols, two half Moidores of Gold, fourteen *French* Crowns, one Pair of Silver Buckles, Value 10s. and one Silver Watch Value 7l. Sterling, the Goods and Chattels of certain Persons, to the Jurors unknown, being found in the aforesaid Sloop, in the Custody of the said *Peter Manwaring* and others his Mariners, against the King's Peace, his Crown and Dignity, &c.

The Attorney-General, in opening the Indictment, observ'd,

THAT the Prisoners were to be try'd on the Statute of 28 *Henry VIII.* for Piracy. That this was a Crime so odious and horrid in all its Circumstances, that those who had treated on that Subject seem'd to be at a Loss for Words and Terms to stamp a sufficient Ignominy upon it, some stiling them Sea-Wolves, others Beasts of Prey and Enemies to Mankind, with whom no Faith was to be kept; and all this gave us but a faint Resemblance of these Miscreants; for Wild Beasts only devour others to satisfy their Hunger, and were never observ'd to prey upon their own Species; but Pirates prey'd upon all Mankind, those of their own and other Nations without Distinction, *Turks, Jews, or Christians*, were all alike to them; nor were they content to take such Things as they wanted from the defenceless Merchant, but often threw their Goods overboard, burnt their Ships, and tortur'd and massacred the Owners, making that their Pastime and Diversion, which cou'd not be recited without the utmost Horror; and if a Stop was not put to their Depredations, and their Trade better protected than it had been of late, not only *Carolina*, but all the *English* Plantations in *America* would be totally ruin'd in a short Time.

Rich. Allen Esq
Attorney General
of *South Carolina*
opens the first
Indictment.

Vol. vi. p. 160.

That *Jamaica* was already ruin'd by Pirates, and other Parts had suffer'd grievously: He did not know what was doing in *England*; but he must say no effectual Care had been taken to suppress the Pirates; and if a true Representation of these Matters were laid before his Majesty, he cou'd not but hope they shou'd have some Redress.

That the *Spaniards*, by breaking up the Bay of *Campeachy*, had put great Numbers of profligate People

The Tryal of Major Stede Bonnet, &c.

People upon a worse Course of Life than they were engaged in before, and receiv'd more Damage by them now, than they had done from their cutting of Logwood before, nine Parts in ten of these People had turn'd Pirates, and liv'd upon the Plunder of their Merchants ever since: This and the great Expectations from the Wrecks on the *Babama* Islands, where few had met with Success, had greatly increased the Number of Pirates of late Years.

He had instanced in *Jamaica*, as a Place almost ruin'd by Pirates; but what a dismal Dilemma were they themselves reduc'd to in *May* last, when *Thatch* the Pirate lay off their Harbour with a Ship of forty Guns, and an hundred and forty Men, as well fitted out as any Fifth-Rate in the Navy, with three or four Pirate Sloops under his Command; who having taken Mr. *Samuel Wragg*, one of the Council of that Province, bound to *London*, and several other Vessels going in and out of the Harbour, plunder'd them of 1500*l.* in Gold and Pieces of Eight, and afterwards sent *Richards* and two or three other Pirates into the Town, to demand a Chest of Medicines of three or four hundred Pounds Value, threatening to behead *Wragg* and all the Prisoners they had on Board, if it was deny'd them; and the Pirates walk'd in the publick Streets in the Face of the People, waiting for the Governor's Answer; who was oblig'd to comply with them, to save the Lives of those Gentlemen they had on Board: That some of the Prisoners at the Bar werethen in *Thatch's* and *Bonner's* Crews: That afterwards *Vaughan*, another noted Pirate, lay off their Bar, sending in another insolent Message, which rous'd their Courage; and though they had been reduc'd very low by the Calamities of the *Indian* War and heavy Taxes, they fitted out two Sloops; and tho' *Vaughan*, having some Intimation of their Design, abandon'd their Coasts, yet Colonel *Rbett*, who commanded in this Expedition, and the gallant Gentlemen who attended him, discover'd another Pirate at *Cape Fear*, which prov'd to be the *Revenge*, commanded by Major *Bonner*; and after a smart Engagement, which lasted six Hours, forc'd the Pirates to surrender; but they had lost ten or eleven of their Friends, who were kill'd on the Spot, and eighteen were wounded, of whom several died after they came on Shore:
That

That this was one of those very Sloops that lay off their Harbour in *May* last, when they took Mr. *Wragg* Prisoner, and sent up their insolent Demands to the Governor: But Justice followed them close at their Heels; for they were now brought to suffer in that Country they had so lately insulted.

That *Bonnet's* Escape out of Prison was a great Misfortune to them, as he might revenge himself on the Merchants of that Province; but he hoped that great Reward of seven hundred Pounds, which the Government had offered for the taking of him, Vol. vi. p. 158. would have its Effect, and they should soon see him apprehended.

He was sorry to hear some Expressions drop from private Persons in favour of the Pirates, especially *Bonnet*; as, *That he was a Gentleman, a Man of Honour, a Man of Fortune, and one that had a liberal Education*; for these Accomplishments were but so many Aggravations of his Crime: And how could a Person be esteem'd a Man of Honour, who had lost all Sense of Humanity, and was become an Enemy to Mankind, a Robber, a Pirate, who had given himself up to plunder and destroy his Fellow-Creatures.

He had an Account in his Hand of above twenty-eight Vessels taken by him and *Thatch* since *April* last; and how many before, no Body knew. His having an Estate aggravated his Offence, because he was under no Temptation of taking up that wicked Course of Life: His Education was a farther Aggravation; for this generally softened Mens Manners, and corrected a savage brutish Temper: But when the Endowments of Nature, Education, or Fortune were perverted to vile Purposes, such Persons generally became the worst of Men, and most dangerous to the Commonwealth, as was evident from this Instance.

That most of the Prisoners were old Offenders, had served under *Thatch* and *Bonnet* in taking the twenty-eight Vessels above mentioned, and were with them when they lay off the Harbour in *May* last: These were Part of the Men that sent in that insulting Message, and who killed and wounded so many brave Men in the obstinate Defence they made against Colonel *Rbett*; so that there was scarce any Room left for Pity or Compassion.

Vol. vi. p. 164. [Ignatius Pell, the Boatswain of the Pirate, sworn.]

The Evidence
against the Pri-
soners.

He deposed, That he was Boatswain of the *Revenge*, Major Bonnet's Sloop; that he and all the Prisoners came with the Pirates, *Thatch* and Major Bonnet, from the Bay of *Honduras* to *Providence*, one of the *Bahama* Islands, except *Robert Tucker*, who came to them out of a Sloop belonging to *Bermudas*; that they took several Vessels; after which they came and lay off the Bar of *Charles-Town*, where they took five Vessels more; that from *Charles-Town*, they set sail to *Top-sail-Inlet* in *North Carolina*, where their Ship was run ashore, and lost by the Contrivance of *Thatch*; that after they had been there some Time, Captain *Thatch* came on board, and took away all their Arms, their best Hands, and all their Provisions, and the rest of the Men were put on Shoar; but that Major Bonnet sent his Boat from the *Revenge*, and fetch'd them all on board him.

Att. Gen. You say all were on Shoar, and all might have gone into the Country? Pray what Restraints were any of you under?

Ign. Pell. None, when we left *Top-sail-Inlet*. It was with a Design to go to *St. Thomas's*, to procure the Emperor's Commission to go against the *Spaniards*; but the first Sail we saw we gave Chace to, and came up with her.

Hepworth Coun-
sel for the King

Mr. Hepworthb. What did you take out of that Vessel?

Ign. Pell. We took some Provisions out of her. After we had discharged her, we saw another which we chased, and took; and after we had taken out some Provisions, we discharged her. Next Day we saw two Sloops bound to *Bermudas*, which we took; and the Day after we gave Chace to another, bound to ——— and came up with her, in which were some *Negroes*. We left three *Negroes* on board, and two Whitemen, and sent three Hands from the *Revenge*; but seeing two Sloops more, we stood after them: One of which turned Tail, we never saw her more: We came up with the other Sloop, out of which we took thirty Barrels of Beef, and some Butter and other Provisions.

Vol. vi. p. 165.

Mr.

Mr. *Hepworth*. What did you return in the room of these Goods.

Ign. Pell. Some *Molasses* : And next Day we took a Ship, and a Scooner ; which Major *Bonnet* took with him.

Mr. *Hepworth*. Did you take no Plunder out of those ?

Ign. Pell. The chief was Provisions. Then we failed in Company, and the next Day we came to the *Capes of Virginia* ; where we met with two Vessels bound for *Glasgow* in *Scotland*, out of which we took Provisions and some Tobacco. Then we sailed to Cape *James* ; and coming to an Anchor there, we saw a Sloop, which was Captain *Manwaring's*, and sent our Dory, (Canoe,) with some Hands on board her ; and, in a little Time after, they brought Captain *Manwaring* on board the *Revenge*.

Att. Gen. Were all the Prisoners on board *Manwaring's* Sloop ? or had they all their Arms ready when *Manwaring* was taken ?

Ign. Pell. I can't say they were all on board ; but they had all their Arms ready.

Chief Justice Trott. Did they all appear forward and active ? Did none of them shew themselves dissatisfied, or unwilling to act at that Time.

Ign. Pell. One was as forward and willing to act as another, for what I observed.

Att. Gen. How long was Captain *Manwaring* Prisoner ? and what became of the Goods ? Did you share them ?

Ign. Pell. Yes ; we shared a little before we came to *Cape Fear*.

Att. Gen. Did all the Prisoners receive their Shares ?

Ign. Pell. Yes, Sir ; I know nothing to the contrary.

[*Captain Thomas Read sworn.*]

He deposed that while he was Prisoner on board the *Revenge Sloop*, they saw another Sloop coming into the Bay, where they lay at Anchor ; and that Major *Bonnet* sent off five Hands with the Dory, (or Canoe ;) and about an Hour after they came back again, and brought Captain *Manwaring* Prisoner with them : That the Major demanded *Man-*

waring's Papers; and he gave them to him. He then asked from whence he came, and what he had on board? *Manwaring* answered, he came from *Ante-goa*, and was bound for *Boston*, and gave an Account what he had on board. The next Morning, they took several Hogsheds out of *Manwaring's* Sloop, and put them on board the Scooner; and he heard Major *Bonnet* say, there were twenty-one Hogsheds,

Chief Justice Trot. Do you know any Thing of their Sharing? Did they all take their Shares?

Capt. Read. I won't say I saw every Man have his particular Share; but they were all together when they did share.

[*Captain Peter Manwaring sworn.*]

Vol. vi. p. 166.

He deposed, That being at Anchor about Eight or Nine o'Clock in the Evening, he saw a Canoe coming, and ordered his Man to hale them: He asked from whence they came, and what Sloops they were? They answered Captain *Thomas Richards* from *St. Thomas's*, and Captain *Read* from *Philadelphia*; which they were glad to hear, and hoped all was well; but as soon as they came a board they clapp'd their Hands to their Cutlasses, and he found they were taken; and said, *Gentlemen, I hope as you are Englishmen, you will be merciful; for you see we have nothing to defend ourselves.* They said they would be very civil; and the Deponent was ordered on board the *Revenge*. When he came there, Major *Bonnet* demanded his Papers. The next Morning *Tucker* the Prisoner, came to the Deponent, and bid him tell what he had on board, or it would be worse for him. He answered, *He had Molosses, Sugar, and Rum*; and they took out the Molosses and Rum, and put on board the Scooner.

Att. Gen. How did they behave themselves to you?

Capt. Manwaring. They were very civil: All brisk and merry; and had all Things plentiful, making Punch, and drinking.

[*James Killing, Manwaring's Mate, sworn.*]

He deposed, That on the 31st of *July*, between Nine and Ten in the Evening, they came to an Anchor near

near *Cape James* ; that about Half an Hour after, he saw a Canoe coming, and hailed them, asking from whence they came ; and they answered, as above that he ordered the Men to hand down a Rope to them, and as soon as they came on board they clapped their Hands to their Cutlasses, and he found they were taken ; that they cursed and swore for a Light, and took their Captain away to the *Revenge*. When they came into the Cabbin, they cut down the Pine-Apples with their Cutlasses, and asked what Liquor they had on board ; and being answer'd *Rum*, they made a Bowl of Punch, and went to drinking the Pretender's Health, and hoping to see him King of *England*. The next Morning they took several Hogheads of the Molosses and Rum, and put them on board the Scooner ; that they invited the Depo-
nent to go along with them, and threaten'd that if he would not, they would set him upon a Ma-
roon Shore ; but he refused : That afterwards they set sail, taking the Sloop with them, and came to *Cape Fear*.

The Prisoners in their Defence said,

THEY were all left upon a Maroon Shore, and must have perished, if they had not gone on board Major *Bonnet*, who invited them to go to *St. Thomas's*, where he would get the Emperor's Commission to go a privateering on the *Spaniards* ; and that having no Provisions left, they took them out of such Ships as they met with.

The Prisoner's
Defence to the
first Indictment.

Vol. vi. p. 167.

But the Evidence being full against them, and the Prisoners appearing to be old Offenders, who had been guilty of numberless Offences of this Kind, the Jury found them guilty.

The rest of the Prisoners were afterwards try'd, and found guilty of the same Fact, except *Thomas Nicholas*, *Rowland Sharp*, *Jonathan Clark*, and *Thomas Gerrard*, who appeared plainly to be under a Force, and refused to share the Plunder of the Ships that were taken with them.

Then the Prisoners were arraign'd, and try'd upon the other Indictment, which sets forth,

THAT

Vol. vi. p. 171.
The second In-
dictment.

THAT *Edward Robinson, Robert Tucker, William Scot, &c.* on the 31st of *August*, in the 5th Year of *King George*, by Force and Arms, on the High Sea, in a certain Place, called *Cape Fear*, in the Latitude of 34. or thereabouts, and within the Jurisdiction of the Court of Admiralty of *South-Carolina*, did piratically and feloniously set upon, board, break, and enter a certain Merchant Sloop, called the *Fortune*, *Thomas Read* Commander; and then and there piratically and feloniously did make an Assault upon the said *Thomas Read*, and others his Mariners, putting them in Corporal Fear of their Lives; and did then and there piratically and feloniously steal, take, and carry away six Tierces of Bread, of the Value of thirteen Pounds current Money of *Pensilvania*, four Barrels of Bread, Value four Pounds, one Barrel of *Linseed-Oil*, Value seven Pounds, two Tierces of Hams, Value twenty Pounds, twenty Barrels of Flower, Value twenty Pounds, Six *China* Plates, Value three Pounds, seven Iron-bound Blocks, Value forty Shillings, ninety Fathom of Rigging, Value three Pounds, and the Pump, with Boxes and Breaks, Value twenty Shillings of like Money, the Goods and Chattels of certain Persons, to the Jurors unknown, being found in the aforesaid Sloop, in the Custody of the said *Thomas Read* and his Mariners, against the King's Peace, his Crown, and Dignity, &c.

[*Ignatius Pell, Boatswain to the Pirate, sworn*]

The Evidence against the Prisoner on the second Indictment.

Mr. Hepworth. Give an Account of the taking of Captain *Thomas Read*.

Ign. Pell. Captain *Read* was in Company with two Vessels more which we took; but did not share till we came to *Cape Fear*.

Mr. Hepworth. Were the Goods mentioned in the Indictment taken out?

Ign. Pell. Yes; and the Prisoners at the Bar had their Shares.

[*Captain Peter Manwaring sworn.*]

Mr. Hepworth. Pray give an Account of the sharing Captain *Read's* Goods.

Captain

Captain Manwaring. As for taking of *Captain Read*, I can say nothing, because he was taken before I was taken; but when we came to *Cape Fear* they shar'd what they had.

[*Captain Thomas Read sworn.*]

He depos'd, That after he was taken, *Robert Tucker*, with some others, came on board him, and afterwards they sail'd to *Cape Fulopen*, where *Captain Manwaring* was taken; and afterwards to *Cape Fear*, where they shar'd the Goods mention'd in the Indictment.

Edward Robinson. When did you see me on board your Sloop?

Captain Read. I cannot say I saw you on board; but you were with them when they shar'd.

Chief Justice Trott. If you was not on board; yet if you was one of the Crew, and stood ready to assist those that boarded her, you are as much a Pirate as the other.

[*James Killing sworn.*]

He depos'd, That he saw the Prisoners sharing the Goods at *Cape Fear*.

[*Francis Griffin, Captain Read's Mate, sworn.*]

He depos'd, That after they were taken, *Tucker* and some others came on board, and that *Tucker* fell to cutting and wounding their People; that they were carried to *Cape James*, or *Cape Fulopen*, where *Captain Manwaring* was taken; and from thence they sail'd to *Cape Fear*; and the Goods mention'd in the Indictment were taken out, and shared by the Pirates.

The Prisoners made the same Defence to this Indictment, they had done to the other, viz. That they were under a Force; but were all found guilty, except *Thomas Nicholls*, *Rowland Sharp*, *Jonathan Clark*, and *Thomas Gerrard*, who appear'd to be detain'd against their Wills.

On Wednesday the 5th of November, 1718. the Chief Justice *Trott* pass'd Sentence upon all the Prisoners (except those who were acquitted, and Major

for *Bonnet*, who was not yet taken) in the following Words, viz.

Vol. vi. p. 183.
The Sentence
pass'd on the
Prisoners.

YOU the said Robert Tucker, Edward Robinson, Neal Paterfon, &c. shall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hang'd by the Neck, till you are severally dead. And the God of infinite Mercy be merciful to every one of your Souls.

Major *Bonnet*
taken, and
brought to his
Trial.

Major *Stede Bonnet* having been retaken on the Sixth of November, was on the Tenth of the same Month brought to the Bar, and arraign'd upon both Indictments. To which he pleaded *Not Guilty*.

The Witnesses giving much the same Evidence against *Bonnet* they had done against his Crew, I shall only take notice of that Part of it which had a particular Relation to him.

Ignatius Pell, the first Witness, depos'd, That he came acquainted with Major *Bonnet* at the Bay of *Honduras*; and that then Captain *Thatch* was Commander in Chief; who having left them behind, they went on board Major *Bonnet*'s Sloop, intending to get the Emperor's Commission to go a privateering; but took the first Ship they saw, and so on, as in his former Evidence.

Chief Justice Trott. Was not Major *Bonnet* your Commander?

Ign. Pell. He was call'd our Captain, to be sure; but the Quarter-Master *Tucker* had more Power than he.

Att. Gen. Had he his Share of *Manwaring's* Goods?

Ign. Pell. He had it.

Bonnet. Did you ever hear me force any Man to go?

Ign. Pell. No, Major; I can't say you did.

Bonnet. Do you remember, that when they began to quarrel about Provisions, I said I would leave the Sloop.

Ign. Pell. I do remember you said so.

Chief Justice Trott. But if you did take some Provisions, would not less than thirteen Vessels satisfy you.

Bonnet. It was contrary to my Inclinations.

[Captain

[*Captain Manwaring sworn again.*]

Chief Justice Trott. When your Ship was taken, Vol. vi. p. 134
before whom was you brought?

Manwaring. Before the Man at the Bar, (*Bonnet*;) Captain *Thomas* he was call'd then, and I gave him my Papers; the next Day they hoisted the Rum and Molosses out of the Sloop, and put them on board the Scooner; but the Gentleman was very civil to me.

Bonnet. Did you ever see me share among the rest?

Manwaring. You was in the Round-House, and a Bundle and some Pieces were brought, and I saw you take it and give it the Negroe Boy to put into the Chest.

Bonnet. There were several that I kept their Shares for, but it was not mine. Did you ever hear me order any Thing out of the Sloop?

Manwaring. I am sorry you should ask me that Question, for you know I did; and it was my All that I had in the World. I don't know but my Wife and Children are now perishing in *New-England* for want of Bread; had it been only myself, I had not matter'd it so much; but my poor Family grieves me. Vol. vi. p. 135.

[*James Killing sworn.*]

Besides his former Evidence he depos'd, That Major *Bonnet* order'd him to go and shew which was the Rum, and which was the Molosses; and that *Bonnet* gave Orders for taking out the Goods.

[*Captain Read sworn.*]

He depos'd, That when they were at *Cape James*, they saw a Sloop come to an Anchor, and Major *Bonnet* order'd the Dory (the Canoe) with five Hands to go off, and in about half an Hour they came on board with Captain *Manwaring*; and that Major *Bonnet* afterwards gave Orders to take out the Goods.

Att. Gen. Do you know if the Major receiv'd his Share?

Capt.

The Tryal of Major Stede Bonnet, &c.

Capt. Read. He was in the Round-House when they shar'd; and they brought in several Pieces of Cloth, and a Bag of Money; and he order'd it to be put into the Chest by the Boy.

Then the Prisoner call'd a Boy to give Evidence on his Behalf; who depos'd, That he heard when Major *Bonnet* took out his Clearance at *North Carolina*, the Sloop was clear'd for *St. Thomas's*, for a Commission to go against the *Spaniards* a privateering.

Chief Justice Trott. If this be all the Evidence you have, it will not be of much Use to you.

Bonnet. I never took a Vessel, but with Captain *Thatch*.

Chief Justice Trott. Did you not take Captain *Manwaring's* Sloop?

Bonnet. It was contrary to my Inclinations: I told them several Times, if they would not leave off that Course of Life, I would leave the Sloop; and when Captain *Manwaring* was taken, I was asleep.

Chief Justice Trott. Captain *Read* swears you order'd the Dory to be sent off with five Hands to take him.

Major *Bonnet*
found guilty.

The Jury being withdrawn, return'd after some Time, and brought in their Verdict, That the Prisoner was GUILTY.

Vol. vi. p. 18.

Then the Court adjourn'd till the next Day, being Tuesday the 11th of *November*, when the Prisoner desir'd to withdraw his Plea of Not guilty to the second Indictment, which charged him with the taking of Captain *Read*, and pleaded GUILTY.

He is executed.

Sentence being pass'd on him for Piracy as usual, on the 12th of *November*, he was executed at the *White Point* near *Charles-Town* on the 10th of *December* following.

PROCEEDINGS of the House of Lords in Ireland against JEFFERY GILBERT Esq; Lord Chief Baron, JOHN POCKLINGTON Esq; and Sir JOHN St. LEGER, Knight, Barons of the Exchequer there, for issuing Procefs in the Cause of Annelly and Sherlock, in Opposition to an Order of that House, July 28. 5 Geo. I. 1719.

*A*lexander Burrowes, High Sheriff of the County of Kildare, having been several Times fined by the Court of Exchequer, for not obeying an Order of that Court, which he apprehended to be a Breach of an Order of the House of Lords, presented a Petition to that House of the following Purport, viz.

Vol. vi. p. 188.
Proceedings against the Barons of the Exchequer in Ireland.

THAT on the 3d of October, 1717. their Lordships having order'd the High Sheriff of the County of Kildare to put Hester Sherlock into the Possession of the Lands of Little-Rath, and other Lands in the said Order mentioned, to hold till she should receive thereout the Sum of 1507l. 14s. 8d. Farthing, chargeable on the said Lands.

Petition of the High Sheriff of Kildare.

Charles Nattal, then High Sheriff of the said County, did accordingly put the said Hester Sherlock into the Possession of the Premises; and she was actually in Possession thereof when the Petitioner was sworn Sheriff of the said County of Kildare for the Year ending at Michaelmas, 1718.

That on the 15th of March, 1717. an Injunction issued out of the Court of Exchequer, sign'd by the Right Honourable Jeffery Gilbert Esq; Lord Chief Baron of the said Court, directed to the Petitioner then Sheriff of the said County; whereby he was requir'd, upon Receipt of the said Order, bearing
Date

Date the 19th of *February* preceding, to restore *Maurice Annesly* Esq; to the Possession of the said Lands, and to support the said *Maurice Annesly* in such Possession till further Orders of the said Court, or till the said *Maurice Annesly* should be evicted by due Course of Law. Which Injunction was deliver'd to the Petitioner by *John Annesly* the said *Maurice's* Brother, who requir'd him to give him Possession of the said Lands, having a Letter of Attorney from his said Brother for that Purpose. But the Petitioner refus'd to execute the said Injunction, conceiving it to be a Breach of their Lordships said Order of the 3d of *October*, 1717.

Whereupon the said *John Annesly* mov'd the Court of *Exchequer* on the 13th of *May*, 1718. on his Affidavit, setting forth, That the Petitioner refus'd to execute the said Injunction; which Affidavit was read by *John Beauman* Gent. one of the Attorneys of the said Court; and the said Lord Chief Baron, and the two other Barons, thereupon order'd, That the Petitioner should be fin'd Forty Pounds, if he did not return the said Injunction in four Days. And on several Motions afterwards by the said *John Beauman*, the said Barons impos'd several Fines on him, amounting to Seventy seven Pounds; and on another Motion on the 30th of *June*, 1718. order'd an Attachment against the Petitioner.

Vol. vi. p. 189. That on the 7th of *July*, 1718. the Petitioner return'd the said Injunction with their Lordships Order of the 3d of *October*, 1717. and the Resolutions of that House, dated *Feb. 11. 1703.* on the Petition of *Edward* Earl of *Meath*, and *Cecilia* his Wife; and that the Petitioner, by Reason of their Lordships said Order and Resolutions, durst not restore the said *Maurice Annesly* to the Possession of the Premises, as by the said Injunction was requir'd.

That the said Barons, *Pocklington* and *St. Leger*, sitting in the *Exchequer-Chamber*, the 16th of *July*, 1718. and having heard the said several Fines impos'd on the Petitioner read to them, were pleas'd to reduce and take off the said Fines, upon paying Sixpence in the Pound. But in the Afternoon of the same Day, *John Draycott*, an Attorney of the said Court, who paid the Box for the Petitioner on taking off the said Fines, was sent for by the Lord Chief Baron *Gilbert* to his House, where the other

two Barons then were; and having heard the said Injunction read, and what was offer'd in Behalf of the Petitioner, in Justification of the said Return, the Barons oblig'd the said *Draycott* to take back the Money he had paid for taking off the said Fines, and estreated the same; which afterwards issued in Process against the Petitioner, although the said Return was never complain'd off by the said *Maurice Annesly*; nor had the Petitioner an Opportunity, or a Day given him to justify the Legality of the said Return, though the same was pray'd by *Draycott* in Behalf of the Petitioner.

That the Barons having no Regard to the said Return, on the Motion of *Beaumont*, the 7th of *November* last, order'd the said Attachment to be renewed against the Petitioner; whereupon he was oblig'd to abscond, and suffer'd very much in his Fortune, and could not come upon his Accounts before the said Barons of the *Exchequer*, being assur'd they would have committed him, if he had appear'd in the said Court, for not obeying the said Injunction. And the Barons taking Advantage of the Petitioner's Circumstances, fin'd him 1200*l.* for not coming upon his Accounts, though he always was ready to render his Majesty a just Account of his Sheriffwick.

And therefore pray'd such Relief in the Premises, as to their Lordships, in their great Wisdom, should seem meet.

Upon reading this Petition, the House of Lords referred it to the Committee for Courts of Justice; who having consider'd it, made a Report by the Lord Bishop of *Clogher*, their Chairman, to the Effect following:

THAT by an Order of that House, of the 3d of *October*, 1717. they find *Hester Sherlock*, Widow, was put into the Possession of the Lands of *Little Rath*, &c. as in the said Petition is set forth, and continued so possess'd for near two Years by Virtue of the said Order. That by the Minutes of the *Chancery* Side of the *Exchequer*, it appears, that the Lord Chief Baron, on the 19th of *February*,
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1717.

The Report of the Committee of Lords of Ireland, on considering the said Petition.

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1717. produced a * Letter, dated *London, Feb. 8.*
 1717. sign'd *Cowper C.* in which two Papers † were
 enclosed, dated *Feb. 6. 1717.* sign'd *William Cowper,*
Cler' Parliamentor', directed to the Lord Chief Bar-
 on of the *Exchequer in Ireland*, and the rest of the
 Barons, said to come from the Lords of *Great Bri-*
tain, requiring them to restore *Maurice Annesly* to
 the Possession of the Lands he was dispossess'd off,
 pending his said Appeal in the House of Lords of
Great Britain.

That thereupon the said Barons, without any
 Motion, order'd an Injunction for restoring the said
Maurice

London, February 8. 1717.

My Lord Chief Baron,

* BY Order of the House of Lords, (a Copy whereof I herewith
 send you,) I transmit to your Lordship, and the rest of the
 Barons, of his Majesty's Court of Exchequer in *Ireland*, the Order
 of the said House; whereby the Barons of the Court are commanded
 to restore Mr. *Annesly* to the Possession of his Estate. Your Lordship
 will immediately communicate this to the rest of the Barons, and
 let me know, as soon as can be, what is done by yourself and the rest
 of the Barons, in Pursuance to their Lordships Order, as you see by
 the above-mentioned Copy, I am ordered to require of you. I am

Your Lordships most Faithful Servant,

Cowper C.

*To the Lord Chief Baron of the Exchequer
 in Ireland, and the rest of the Barons of
 the said Court.*

Die Jovis, 6 Februarii, 1717.

† ORDERED by the Lords Spiritual and Temporal in Parliament
 assembled, That the Lord Chancellor do transmit the Order of
 this House to the Barons of the Exchequer in *Ireland*, which requires
 them to cause Possession to be forthwith delivered to *Maurice Annesly*
 Esq; of the Lands of which he was dispossessed, pending his Appeal
 in this House, commanding the Barons of the Exchequer at the same
 Time, to return to this House, as soon as they can, an Account of
 what shall be done therein.

William Cowper, Cler' Parliamentor'

Die Jovis, 6 Die Februarii, 1717.

UPON Report from the Committee of the whole House, to whom
 it was referr'd to consider, by what Methods the Order of this
 House, for the restoring Possession to *Maurice Annesly* Esq; of the Es-
 tate in *Ireland*, whereof he was dispossessed, pending his Appeal in
 this House, may be most properly enforced and executed; it is ordered,
 by the Lords Spiritual and Temporal in Parliament assembled, That
 the Barons of the Court of Exchequer in *Ireland* do cause the said
Maurice Annesly Esq; to be forthwith restored to the Possessions of
 the Lands of which he was dispossessed, pending his Appeal, which
 was received by this House the Eighth of June last.

William Cowper, Cler' Parliamentor'

Maurice Annesly to the Possession of the Lands he was dispossest'd of, pending his said Appeal, where- by the Sheriff was forthwith to put the said *Maurice* into the Possession of the said Lands.

That on the 14th of *March*, 1717. Affidavit was made, before the Lord Chief Baron, by *John Annesly*, That he was dispossest'd of the Lands in question, which he held by a Lease from *Maurice*, pending his said Appeal.

That on the same Day, the said Affidavit being filed, in order to have the Injunction made out, Mr. *John Draycott*, Attorney for Mrs. *Sherlock*, before it was issued, attended Mr. *Becher*, Deputy-Remembrancer, at his Office, and in the Presence of the said *John Annesly* inform'd the said *Becher*, That the said Affidavit was insufficient, for he was ready to prove that the said *Maurice Annesly* was not, at the Time of the said Appeal, or at any Time since, in Possession of the Lands mention'd in the Affidavit, having sold the same some Years before to *Andrew Wilson* Esq; and Mrs. *Frances Harman*.

That by two Copies of Memorials, out of the Register's Office, for Registering Deeds, it appear'd, That by Deeds of Lease and Release, dated the 1st and 2d Days of *March*, 1714. the Lands of *Little Rath*, *Darr*, and *Bodingstown*, in the Borough of *Naas* and County of *Kildare*, were convey'd by *Maurice Annesly* &c. to *Andrew Wilson* and his Heirs; and the Lord *Albham* declared upon his Honour, that he knew the said *John Annesly* paid Rent to the said *Andrew Wilson*, by virtue of and under the said Purchase. And it appear'd by other Deeds of Lease and Release, dated the 2d and 3d Days of *April*, 1715. That the said *Maurice Annesly* convey'd to *Frances Harman* Widow, and her Heirs, the Lands of *Mullenafooky* in the said County of *Kildare*. That notwithstanding there was no County mention'd in the said Affidavit, and such Notice given of the said Sale to the Officer as aforesaid; and that it did not appear by the said Affidavit, that the said *Maurice Annesly* was dispossest'd of the Lands therein mention'd during his Appeal. The said Injunction was issued directly to the Sheriff of the County of *Kildare*, on the 22d of *February*, in the 4th of the King, returnable into the said Court of *Exchequer*, *Quinden' pas'* then next ensuing.

That by an Affidavit, sworn by *John Annesly* the 7th of *May*, 1718. before Mr. Baron *St. Leger*, he depos'd, That on the 15th of *March* preceding, he deliver'd the above-mention'd Injunction to *Alexander Burrows* Esq; then High Sheriff of *Kildare*, and shew'd him a Letter of Attorney from the said *Maurice*, empowering the said *John* to receive the Possession of the Lands in the said Injunction mentioned; but the said Sheriff refused to execute the same.

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That there were Fines laid upon the said Sheriff, for not returning the said Injunction, amounting to 77*l.* as in the said Petition is set forth.

That the said *Draycott* prov'd, That the Barons had due Notice of the Order of that House, and of the Resolutions made the 11th of *February*, 1703. before any Proceeding in the said Cause, subsequent to the Order of that House of the 3d of *October*, 1717. and that the said *Annesly*, and *Beauman* his Attorney, were serv'd with Copies of the said Order and Resolutions, before any Motions were made by them in the said Cause.

That by the Minutes of the 13th of *June*, 1718. it appear'd, that Mr. Chancellor of the *Exchequer* declar'd, That the Order of the House of Lords of *England* being only directed to the Barons of that Court, and that he found the Order of that Court, which was made thereon, was made as if done by him and the Treasurer, as well as the Barons; and he apprehended, that in regard the said Orders were not directed to him, or he present when the Order of the Court of *Exchequer* was made, *That he had nothing to do therewith, and did not consent thereto.*

That it appear'd the said Cause between *Sherlock* and *Annesly* was of the *Chancery* Side of the *Exchequer*; and all Bills of the *Chancery* Side us'd to be directed to the Chancellor, Treasurer, and Barons; and if a Bill was otherwise directed, it wou'd be Error.

That on the 30th of *June*, 1718. an Attachment was awarded against the Burrow and Sheriff, for not returning the Injunction, Tested the 1st of *July*, in the 4th of the King, and returnable before the Chancellor, Treasurer, and Barons of the said Court, *in Cro' Animar'.*

That

That the said Injunction was return'd, and the Fines compounded or taken off, as in the said Petition is set forth; but that upon the same Day *Draycott* was sent for to the Lord Chief Baron's House, and obliged to take back the Money he had paid to the Box for taking off the said Fines; and the same were estreated.

That the Return made by the Sheriff on the said Injunction, was to this Purpose, *viz. That before the said Writ came to him, the Order of the House of the 3d of October, 1717. and the Resolutions of that House of the 11th of February, 1703. were deliver'd to him, which he recites in hæc verba**.
Which

* *The Return upon the Injunction.* Cansellar' Thesaurar' & Baronibus Infra-script' humilime, Certifico quod ante adventum hujus Brevis mihi direct' quædam Resolutiones, præhonorabil' Dom' Procerum hujus Regni Hiberniæ fact' in Parliament' apud Dublin in hoc Regno congregat' undecimo, die Febr' Anno Dom. Millesimo Septingentesimo tertio mihi deliberat' fuer' quæ sequuntur in hæc Verba scilicet.

Resolutions of the Right Honourable the House of Peers, the 11th of February, 1703.

Order'd, on Motion, That the Petition of *Edward Earl of Meath*, and *Cecilia Countess of Meath* his Wife, be read. Read accordingly.

Order'd, on Motion, That the Clerk of the Rolls do bring into this House the Roll of the Acts of Parliament of the 38th of *Henry VI.*

Resolved, on the Question, *Nemine Contradicente*, That by the ancient and known Laws and Statutes of this Kingdom, her Majesty hath an undoubted Jurisdiction and Prerogative of judging in this her High Court of Parliament, in all Appeals and Causes within her Majesty's Realm of *Ireland.*

Resolved, on the Question, *Nemine Contradicente*, That the Determinations and Judgments of this High Court of Parliament are final and conclusive, and cannot be reversed or set aside by any other Court whatsoever.

Resolved, on the Question, *Nemine Contradicente*, That if any Subject or Resiant, within this Kingdom, shall hereafter presume to remove any Cause determined in this High Court of Parliament, to any other Court, such Person or Persons shall be deemed Betrayers of her Majesty's Prerogative and Jurisdiction, and the undoubted ancient Rights and Privileges of this Honourable House, and of the Rights and Liberties of the Subjects of this Kingdom.

Resolved, on the Question, *Nemine Contradicente*, That if any Subject or Resiant, within this Kingdom, shall presume to put in Execution any Order from any other Court, contrary to the final Judgment and Determination of this High Court of Parliament, such Person or Persons shall be deemed Betrayers of her Majesty's Prerogative and Jurisdiction, and the undoubted ancient Rights and Privileges.

Which Return the Lords Committees annex'd to their Report.

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That the said Attachment against *Barrowes* the Sheriff was several Times renew'd; whereby he was oblig'd to abscond, as in the said Petition is set forth; and he was thereupon find 1200*l.* and upwards, for not appearing and passing his Accounts.

That

viledges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

En. Sterne, Cler' Parliament'

Et ulterius certifico quod ante Adventum istius Brevis mihi direct' quidam Ordo fact' per prahonorabil' Domin' Spiritual' & Temporal' in Parliament' in hoc Regno congregat' gerend' dat' septimo die Octobris, Anno Dom' millesimo septingentesimo decimo septimo, etiam mihi deliberat' fuit, qui sequitur in hæc verba, scilicet.

Die Jovis, tertio die Octobris, 1717.

WHEREAS by the Report made from the Lords Committees, appointed to consider the properest Method for the relieving of *Hester Sherlock* Widow, &c. pursuant to what was ordered and adjudged by this House, June 19. 1716. in a Cause, wherein the said *Hester Sherlock* Widow was Appellant, and *Maurice* and *John Annesly Esqs*; were Respondents; as also upon the Resolutions agreed to this Day by this House, it appears, That the Sum of One thousand five hundred and seven Pounds fourteen Shillings and eight Pence Farthing was due to *Hester Sherlock* the Appellant upon the 19th Day of February 1716. on Account of the Principal and Interest of the Portion of *Edward Sherlock* decreed unto the said Appellant as Administratrix to the said *Edward* by this House on the 19th Day of June, 1716. and that the Lands of *Little Rath, Bodingstown, Darr* and *Mullenafooky* in the Barony of *Naas*, and County of *Kildare*, are chargeable with and liable to the Payment of the said Sum: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, That the High Sheriff of the County of *Kildare* do forthwith put the said *Hester Sherlock* into the Possession of the said Lands of *Little Rath, Bodingstown, Darr*, and *Mullenafooky*, subject to the said Sum of One thousand five hundred and seven Pounds fourteen Shillings and eight Pence Farthing, to be held by her the said *Hester*, until such Time as she shall receive the said Sum chargeable upon the said Lands as aforesaid. And this shall be a sufficient Warrant in that Behalf.

To Charles Nuttall Esq; High Sheriff of the County of *Kildare*.

EN. Stern. Cler' Parliamentor' virtut' cujus Ordin' prædict' — Carolus Nuttall posuit prædict' *Hester Sherlock* in plen' quiet' & pacific' possession' omn' Vill' & Terr' prædict' & prædict' *Hester Sherlock*, jam usque continuavit in ead' possession' præmiss' prædict' secund' tenor' & effect' Ordinis prædict' Ratione quorum Resolution' & Ordin' in Præjudic' & Session' privileg' Parliament' per Leges & Statut' hujus Regni Hiberniæ provis' infra nominat' *Maurice* — *Annesly Ar* ad possession' separat' Vill' & Terr' de *Little Rath, Bodingstown, Darr*, & *Mullenafooky* infra mentionat' restituer' non audeo. Sic respondend'

Alex. Barrowes, Ar' Vic'

That upon the 4th of *February*, 1718. the Lord Chief Baron and Mr. Baron *Pocklington*, upon the Receipt of three Papers, † which they alledg'd to be Orders

Annesly vers' Sherlock.

Die Veneris, 23 Januarii, 1718.

† ORDERED by the Lords Spiritual and Temporal in Parliament assembled, That the Lord High Chancellor of *Great Britain* do transmit the two Orders made this Day, on the Behalf of *Maurice Annesly* Esq; to the Barons of the Court of Exchequer in *Ireland*, commanding them at the same Time, to return, as soon as they can, an Account of what shall be done therein.

William Cowper, Cler' Parliamentor'

London, January 27. 1718.

My Lord Chief Baron,

BY Order of the House of Lords, (a Copy whereof I herewith send you,) I transmit to your Lordship, and the rest of the Barons of his Majesty's Court of Exchequer in *Ireland*, two Orders of the said House made in the Cause of *Annesly* against *Sherlock*, by one of which the Barons of that Court are commanded to proceed, by the most speedy and effectual Methods, to cause Possession of the Estate of the the Appellant *Maurice Annesly* Esq; to be restored to him as was required by Order of the said House of the Sixth of *February* last; and by the other, the said Barons are commanded to cause *Hester Sherlock* to account before them upon Oath, for the Rents and Profits of the Estate in Question, which she has made or received, since her gaining Possession thereof by Order of the House of Lords in *Ireland*, and answer and pay the same to the Appellant *Maurice Annesly* Esq; but without Prejudice to the Right, in Case of an Appeal to be brought by either Party from the Decree of the Court of Exchequer in *Ireland*.

Your Lordship will immediately communicate this to the rest of the Barons, and return, as soon as you can, an Account of what shall be done by yourself and the rest of the Barons, in Pursuance of your Lordships said Orders, as you see by the above-mention'd Copy I am order'd to require of you.

I am your Lordships most faithful Servant,

Parker. C.

To the Lord Chief Baron of the Exchequer in *Ireland*, and the rest of the Barons.

Annesly vers' Sherlock.

Die Veneris, 23 Januarii, 1718.

UPON Report from the Lords Committees, appointed to enquire into the Reason of the Delay, in not obeying the Orders of this House, relating to the Appeal of *Maurice Annesly* Esq; and how the same may more properly be enforc'd: It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Barons of the Court of Exchequer in *Ireland* be, and are hereby directed to proceed, by the most speedy and effectual Methods, to cause Possession of the Estate of the said *Maurice Annesly*, as requir'd by Order of this House of the Sixth of *February* last, to be restor'd to him.

William Cowper, Cler' Parliament'

Orders from the House of Lords of *Great Britain*, dated the 23d of *January*, 1718. sign'd *William Cowper, Cler' Parliamentor*, in a Letter produc'd by the said Barons from the Lord Chancellor, dated *London* the 27th of *January*, 1718. sign'd *Parker C.* which came by the Post directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the rest of the Barons of that Court; whereby it was order'd, That the said Barons shou'd cause *Hester Sherlock* to account before them upon Oath, for the Rents and Profits of the Estate in question which she had receiv'd since her gaining Possession thereof by the Order of the House of Lords of *Ireland*, and to pay the same to *Maurice Annesly* Esq; but without Prejudice in Case of an Appeal; and that the said Barons shou'd proceed, by the most speedy and effectual Methods, to cause Possession of the said Estate to be restor'd to the said *Maurice Annesly*.

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That without any Proof that the said alledg'd Orders were regularly sign'd and compar'd, and without Motion of Council or Attorney, it was order'd, in the Name of the Chancellor and Treasurer, Lord Chief Baron, and the rest of the Barons of his Majesty's Court of *Exchequer* in *Ireland*, That an Injunction shou'd forthwith issue, requiring the said *Hester Sherlock*, and the several Tenants of the Lands in question, to restore the Possession thereof to the said *Maurice Annesly*: And it was order'd, That the Rents remaining in the several Tenants Hands, from the Time of *Hester Sherlock*'s Possession, shou'd be forthwith paid over to the said *Maurice Annesly*, though by the Order of the House of Lords of *Great Britain* the Barons were only directed to oblige *Hester Sherlock* to account before them

Annesly vers' Sherlock. Die Veneris, 23 Januarii, 1718.

ORDERED, by the Lords Spiritual and Temporal in Parliament Assembled, That the Barons of the Court of *Exchequer* in *Ireland*, do cause the Respondent *Hester Sherlock*, to account before them upon Oath, for the Rents and Profits of the Estate in Question, which she has made or receiv'd since her gaining the Possession thereof by the Order of the House of Lords in *Ireland*, and to Answer and Pay the same to the Appellant *Maurice Annesly* Esq; but without prejudice to the Right, in Case of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

William Cowper, Cler' Parliamentor

them, upon Oath, for the Rents of the Lands receiv'd by her since her Possession.

That, pursuant to the said Order, an Injunction issued, bearing Test the 12th of *February*, directed to *Hester Sherlock* and Twenty one Persons as Tenants to the said Lands: That the said *Hester Sherlock* was never serv'd with the said Injunction or Order; notwithstanding which, she was thereby dispossest of the said Lands about the 20th of the same Month of *February*, by the Attornments of the Tenants, except a small Part thereof in the Possession of *Dennis Galvin*: That on the 23d of *February*, an Attachment was order'd against the said *Dennis Galvin*, though no such Person was nam'd in the Injunction; and the Committee further observes, that there is no Name of any Attorney to the first Injunction.

Which Report being read, the House agreed to the same and came to the following Resolutions:

Resolv'd, That *Alexander Burrows* Esq; late High Sheriff of the County of *Kildare*, hath fully prov'd the Allegations of his Petition.

Resolutions of the Irish House of Lords, upon the Report of the Committee.

Resolv'd, That in his not obeying the Injunction of his Majesty's Court of *Exchequer*, dated the 22d of *February*, 1717. in the Cause between *Sherlock* and *Annesly*, he had behav'd himself with Integrity and Courage, and with Respect to the Orders and Resolutions of that House.

Resolv'd, That the Fines impos'd on the said *Alexander Burrowes*, amounting to 77*l.* for not returning the said Injunction, be taken off without Fees.

Resolv'd, That the Fine of 1200*l.* and upwards, impos'd on the said *Alexander Burrowes*, for not passing his Accounts, shall be taken off when he shall have made a just Account, without other Fees than such as are usual on passing Sheriffs Accounts.

Resolv'd, That the Lord Chief Baron, and the other Barons of the *Exchequer*, had due Notice of the Resolutions of this House of the 11th of *February*, 1703. in the Cause of the Earl of *Meath* and Lord *Ward*, before they made an Order for an Injunction to put *Maurice Annesly* into Possession; as also Notice of the Order of this House, of the 3d of *October*, 1717. in the Cause of *Sherlock* and *Annesly*.

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Resolv'd

Resolv'd the Lord Chief Baron, and the other Barons, in the Proceedings between *Sherlock* and *Annesly*, as also against *Alexander Burrowes* Esq; late High Sheriff of the County of *Kildare*, have acted in direct Violation of the Orders and Resolutions of this House, and in manifest Derogation to, and Diminution of the King's Prerogative of finally judging in his High Court of Parliament in *Ireland*; as also of the Rights and Privileges of this Kingdom, and the Parliament whereof.

Resolv'd, *Nem. Con.* That it is the Duty of the Barons of the *Exchequer*, where there is any Wrong or Prejudice done the King, in Matters lying before them, to inform the King or the Chief Governors of the Kingdom, or the Council.

Resolv'd, That the Case of *Sherlock* and *Annesly*, being Matter not only of Law but State, ought to have been laid before the King, the Chief Governor, or Council of this Kingdom, it so nearly concerning the King's Prerogative, and the Interest of the whole Kingdom.

Resolv'd, That *Jeffery Gilbert* Esq; Lord Chief Baron, and the other Barons, in their Proceedings between *Sherlock* and *Annesly*, and against *Alexander Burrowes* Esq; have acted contrary to Law, and to the establish'd Practice of the King's Courts.

Resolved, That the said Lord Chief Baron, and the other Barons, having taken upon them to put in Execution a pretended Order from another Court, contrary to the final Judgment of the High Court of Parliament, in the Cause between *Sherlock* and *Annesly*, are Betrayers of his Majesty's Prerogative, and of the Rights and Liberties of the Subjects of this Kingdom.

Order for taking
the Barons into
Custody.

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Ordered, by the Lords Spiritual and Temporal in Parliament Assembled, That the Right Honourable *Jeffery Gilbert* Esq; Lord Chief Baron of the Court of Exchequer, *John Pocklington* Esq; second Baron of the said Court, and Sir *John St. Leger* Knt. third Baron of the said Court, shall, for the said Offences, be taken into Custody of the Gentleman-Usher of the Black Rod, attending this House.

DISSENTIENT,

<i>Joseph Meath,</i>	<i>Fitz-Williams,</i>
<i>Welbore Kildare,</i>	<i>Middleton Canc.</i>
<i>Henry Killala & Achonry,</i>	<i>Donerayle,</i>
<i>Tim. Kilmore & Ardagh,</i>	<i>William Derry.</i>

On the 28th of *January*, 1719. it was resolved by the House of Lords of *Great Britain*, that *Jeffery Gilbert Esq;* Lord Chief Baron of the Court of Exchequer in *Ireland*, and the other Barons of the said Court, in their Proceedings in the Cause between *Annesly* and *Sherlock*, in Obedience to the Orders of this House, have acted according to Law, in Support of his Majesty's Prerogative, and with Fidelity to the Court of *Great Britain*; and that his Majesty be addressed to confer on them some Marks of his Royal Favour, as may recompence the ill Usage they have received, by being unjustly censured and illegally imprisoned for doing their Duty; and that a Bill be brought in for the better securing the Dependency of *Ireland* upon the Crown of *Great Britain*.

Resolution of the House of Lords of *Great Britain*, and the Dependency of *Ireland* on this Crown.

On the 7th of *April* 1720. the Royal Assent was given to *An Act for the better securing the Dependency of the Kingdom of Ireland upon the Crown of Great Britain*; which is as follows:

An Act for securing the Dependency of *Ireland* on *Great Britain*.

WHEREAS the House of Lords of *Ireland* hath of late, against Law, assumed to themselves a Power and Jurisdiction to examine, correct, and amend the Judgments and Decrees of the Courts of Justice in the Kingdom of *Ireland*; therefore for the better securing of the Dependency of *Ireland* upon the Crown of *Great Britain*, may it please your most excellent Majesty, that it may be declared; And be it declared by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That the said Kingdom of *Ireland* hath been, is, and of Right ought to be subordinate unto, and dependent upon the Imperial Crown of *Great Britain*, as being inseparably united and annexed thereunto: And that the King's Majesty, by and with the

Preamble.

The Kingdom of *Ireland* is subordinate to *Great Britain*.

the

The King and
Parliament of
Great Britain
may make Laws
to bind *Ireland*.

the Advice and Consent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament assembled, had, hath, and of Right ought to have, full Power and Authority to make Laws and Statutes of sufficient Force and Validity to bind the Kingdom and People of *Ireland*.

The House of
Lords of *Ireland*,
have not Juris-
diction to judge
of, affirm, or re-
verse any Judg-
ment, &c. given
in any Court
there, and their
Proceedings
thereon are void.

And be it further declared and enacted by the Authority aforesaid, That the House of Lords of *Ireland* have not, nor of Right ought to have, any Jurisdiction to judge of, affirm, or reverse any Judgment, Sentence, or Decree given or made in any Court within the said Kingdom; and that all Proceedings before the said House of Lords upon any such Judgment, Sentence, or Decree, are, and are hereby declared to be utterly null and void, to all Intents and Purposes whatsoever.

*The TRIAL of HUGH REASON
and ROBERT TRANTER at the
King's-Bench, for the Murder of
EDWARD LUTTERELL Esq;
Feb. 3. 1721. Hill. 8 Geo. I.*

The Indictment sets forth,

The Indictment.

THAT the Prisoners, *Hugh Reason* and *Robert Tranter*, on the 17th of *October* last, about the Hour of Ten of the Clock in the Forenoon, by Force and Arms, in the Parish of *St. Clement Danes*, in the County of *Middlesex*, in and upon one *Edward Lutterell* Esq; feloniously, voluntarily, and of their Malice aforethought, did make an Assault; and that the said *Hugh Reason*, with a Pistol then and there charged with Gun-Powder and leaden Bullets, which he shot off against the said *Edward Lutterell*, did give him one mortal Wound under the Right Pap, of the Breadth of one Inch, and the Depth of nine Inches; of which Wound the said *Edward Lutterell* languished until Ten o'Clock in the Evening of the same Day, and then died at the Parish

Parish aforesaid, of the Wound aforesaid ; and that the said *Robert Tranter*, at the Time of the Felony and Murder aforesaid committed, was present, aiding and abetting the said *Hugh Reason* to commit the said Felony and Murder in manner aforesaid, against the King's Peace, &c.

To which Indictment the Prisoners having plead- Vol. vi. p. 196.
ed, *Not Guilty*, Mr. *Strange*, of Counsel for the King, open'd the Indictment ; after which Mr. Ser- Mr. Strange, Ser-
jeant *Cheshire*, Counsel for the
King. jeant *Cheshire* open'd the Evidence ; which I shall not trouble the Reader with here, because he will find it at large in the Body of the Trial ; only take Vol. vi. p. 197.
Notice of such Points of Law and Remarks as the Serjeant was pleas'd to make in the opening of it. He said :

AS on the one Hand the Prisoners were Officers of Justice, and must be protected in serving their Process ; and as long as they did their Duty, must not be abused ; yet when People submitted to their Authority, they ought also to be protected. As the Law required the one to submit, it requir'd the other Vol. vi. p. 198.
to protect and preserve their Lives ; and if an Officer gave unreasonable Correction, where no Resistance was made, and Hardships and Difficulties were put upon Prisoners, so as to shorten their Lives, he submitted it to the Court whether such Officers were not guilty of Murder. The Law was so careful of the Life, that, according to my Lord *Coke*, *If any* 3 Inst. 52. 1.
Man who is in Custody of a Goaler dies, the Coroner's Inquest must sit upon him, that the King may be apprized that the Subject had no foul Play, but died a natural Death. That this Policy of Law, was a good one : And when they had called their Witnesses, it must be left to the Consideration of the Court and the Jury, whether the Case of the Prisoners at the Bar was such a one as could be justified ; or whether they would not deserve the Punishment due to Ruffians and Assassines.

Mr. *Reeve* being also of Counsel for the King, said,

HE apprehended this was not a Matter proper for them to shew with its usual Aggravations ; for Mr. Reeve, Coun-
sel for the King,
states the Fact. consider-

The Trial of Reason and Tranter

considering the Prisoners were not allow'd Counsel, they were only to lay the Matter fairly before the Jury and the Court, both in relation to Matters of Fact and of Law.

That it was true, the Defendants were Officers of Justice, and were entitled to the Protection of the Law, so far as the Law authoriz'd their Actions; but in Case they exceeded their Authority, and used their Prisoners barbarously where there was no Occasion for it, and a needless Quarrel happen'd which they themselves were the Occasion of, and a Person was killed, he submitted it to the Court, if they were not guilty of Murder.

They agreed, if the Person arrested made Resistance, and it was necessary to prevent his Escape, or to preserve the Life of the Officers, (if the Prisoner attempted it,) to use violent Means; and the Quarrel commenced by the Fault of the Prisoner, then the Officers were not to blame : But if a Quarrel was commenced by the Officers against the Prisoner, who had submitted to the Law, and to their Authority, and was willing to do what the Law required, namely, to pay the Debt, and they kept him in Durance only for Civility Money, used him ill, began the Quarrel, and fought with the Man on that Account, they submitted it whether it was not Murder. They agreed that there was not any Person present at the Beginning of the Quarrel, or who continued there during the Quarrel ; but from the Circumstances and the Evidence, it would appear that the Quarrel was begun by the Officers. Indeed there were Pistols fetch'd by the Deceased ; but they were not design'd to be made use of to injure the Bailiffs : They were only for his Preservation, if he should be ill used by them. If after he had taken these Pistols, he laid them aside, and the Bailiffs took them up, and with one of them shot the Prisoner, he apprehended that would take off the Circumstances that seemed to favour them.

The Evidence
for the King.

[Thomas Hargrave, *Servant to the Deceased, sworn.*]

Serj. *Cheshire.* Tell what past between your Master and the Defendants; and be sure speak the Truth.

Hargrave.

Hargrave. My Lord, my Master sent me to call a Pair of Oars to go to *Westminster*, on Tuesday between Nine and Ten o'Clock, (I can't tell what Day of the Month it was;) and when I had called them, he bid me take my Hat and go along with him. When we had got two or three Doors from our Lodging, a little Man, named *Tranter*, clapp'd Vol. vi. p. 199ⁱ him on the Shoulder. [*At the Prisoners Desire the other Witnesses were order'd out of Court.*] And presently after came another Man, *Reason*, and said they arrested him: With that my Master says, *Gentlemen, If you will go with me, you shall have your Money. My Wife is with Child, and I am afraid she will be frighted. No, damn you, we will go with no such Minter.* With that, with great Persuasion, my Master got them to go to his Lodging, and said, *Fetch the Attorney, and I will pay the Money.* *Reason* sent *Tranter* for the Attorney; and *Reason* went up with my Master, who said to my Mistress, *My Dear, don't be frighted; here are two Rascals who have abused me in the Street.* My Mistress said, *Go to my Nephew.* I went, but he did not come immediately. When I returned, I went into the Room, and there was no Harm then: My Master was walking about the Room; and *Reason* stood with his Back to the Wall, and his Face to the Pistols. My Master said, *Let me see your Warrant:* *Reason* shewed it him, and he said, *Wipe your Arse with it,* and throw'd it down upon the Ground. *Reason* asked for Civility Money. My Master said, *No, he would give him none, for he had not used him well.* At last *Tranter* came; I opened the Door to him, he run up Stairs: I said to shut the Door, and heard a Rustling or Noise; upon which I run up Stairs after *Tranter*; and I saw *Tranter* close with my Master, and throw him against the Closet Door; and *Reason* took his Sword, and run my Master through. I took *Reason* hold of the Sword Arm, and he said, *Damn me, if you don't go out of the Room, you shall die before your Master.* I heard no Pistol all that Time.

Serj. Cheshire. Did you go in after the Pistol was shot off, to see your Master?

Hargrave. No; I did not see him till after he was carried into t'other Room.

Serj. Cheshire. Did your Master give any Direction to fetch the Money?

Hargrave.

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Hargrave. Yes ; he said to my Mistress, *Fetch the Money, and I will pay these Rascals.*

Mt. Reeve. Had your Master any Weapon ?

Hargrave. No.

Mr. Reeve. Where were the Pistols ?

Hargrave. One was on the Table, and the other was in the Window : They were not within his Reach.

Mr. Reeve. You saw him stab your Master : Was there any Attempt to give him another Stab ?

Hargrave. Yes ; he went to give another Stab : I took him by the Sword Arm, and he said, *Damn you, you shall die before your Master.* Upon that I went, and cried out Murder.

L. C. Justice. When *Tranter* came, you opened the Door, and followed him up Stairs : Did you hear before he entered the Room any Noise or Stroke ?

Hargrave. Only two or three Words : I can't tell what they were.

Mr. Hungerford. What said *Reason* when your Master told him he did not use him well ?

Hargrave. He swore, and call'd him a great many Names, call'd him Minter and I don't know what.

L. C. Justice. Did your Master desire them to go to any particular Place ?

Hargrave. He said, if they wou'd go with him to *Westminster*, he wou'd pay them the Money : But they refus'd to go, and said, They wou'd go with no such Minter. He wou'd have had them gone with him to *Westminster*, for fear of frightening his Wife : She was great with Child : With great Persuasion he got them to go to his Lodging.

Tranter. Did not I desire your Master to send you for the Attorney, and he said, *Damn you, you shall go.*

Hargrave. No ; I heard no such Thing.

[*Hester Gerrard, Maid to the Deceased, sworn.*]

Mr. Serj. Cheshire. Tell the Court and the Jury what happen'd at Mr. *Lutterell's* Lodgings.

H. Gerrard. I was in the Kitchen of a Tuesday, and heard my Master return again, when he was but just gone out before. I stepp'd to the Stairs, and saw him come in with another Man. I heard him

him go up Stairs: I listen'd, and I heard him speak loud. I understood he was arrested. I went up, and found my Mistress in the Dining-Room, with my Master and Mr. *Reason*. In a little Time she went out of the Dining-Room into the Bed-Chamber; my Master and Mr. *Reason* were in the Room together; my Master talk'd, and walk'd about the Room. I staid with my Mistress some Time, and heard my Master go up Stairs, and come down again immediately. Upon this I went into the Room; my Master had two Pistols, and he put them on each Side of his Coat. I ask'd him, *What do you do with these Pistols, if my Mistress comes she will be frighted.* Says he, *I don't design to do any Hurt.* Then he told me how they had abus'd him in the Street, and call'd him Minter. Says I, *Sir, pray lay down your Pistols;* and he laid them both down on the Table, and had only his Cane in his Hand. I went to my Mistress again; and she was in her Closet, taking out some Money. She got up, lock'd the Closet Door, and sat down on the Bed-Side, and was frighted. Afterwards I heard some Body knock at the Door; and stepping to the Top of the Stairs, I saw, I suppose, that Man, (pointing to *Tranter*;) the Boy let him in; I saw him come along the Entry, and the Boy follow him. Upon that I went to my Mistress, and said, *There is a second Person come; I don't like him; shall I stop him on the Stairs?* He went into the Room, and I saw the Boy follow him. I went in to my Mistress again, and heard a Noise, but did not know what it was. I heard the Noise grow greater, and stepp'd softly through the Passage, threw open the Dining-Room Door, and saw this Gentleman (pointing to *Reason*) stabbing my Master with all his Might, and he on his Back on the Floor, lifting up his Hands, as if he begg'd for Mercy. The other Bailiff had his Back towards me, standing by the Side of my Master. I ran to the Door, and cry'd out Murder; then off went the Pistol. I was frighten'd; for I thought they had shot after me; and in about two Minutes there went off another.

Mr. *Hungerford*. Could your Master come at the Pistols? or had he any Thing in his Hand?

Hester. He was upon the Ground on his Back, and his two Hands lifted up thus; and Mr. *Reason*

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stabbing him upon the Ground. He stab'd him up-
on the left Side.

Serj. *Chebbire*. Did the Pistol go off till after
you had left your Master, and he was stabbing him?

Hester. It was after I saw him, within two Mi-
nutes after. Upon my crying out Murder, the People
came up Stairs.

Reason. Did I stay in the Room by myself, when
your Master went up Stairs?

Hester. Yes; you did.

L. C. Justice. And when he came down, he
had a Brace of Pistols?

Hester. When I saw him he had them in his
Hand; and when I insisted on his laying them down,
he came and laid them down on the Table by me.

[Thomas Waters, a Waterman, sworn.]

Serj. *Chebbire*. Will you tell the Court what you
know of their crying out Murder at Mr. *Lutterell's*
Lodging.

Waters. I was at the Water-Side, when Captain
Lutterell came down to go by Water. I went down
to carry him, and two Men cross'd over the Way
to him. I was gone down to my Boat to wait for
him; but he not coming, I came back again; and
seeing them go into the House, I went to the Water-
Side, and staid there, till the Lad crying Fire, Mur-
der, I run into the Door; and when I was about
half Way up Stairs, Lord, says the Boy, they are
murdering my Master. I run to the Stair-Head,
and heard the Pistol go off, and said to the Boy, Is
there any more Pistols? Then I open'd the Door,
and went in, and met *Reason* with his Sword drawn
in his Hand, and as he was putting it in, it stuck.

Serj. *Chebbire*. Where was Captain *Lutterell*?

Waters. Laid down on the Floor, all in his
Gore. The young Man follow'd me in. One Pis-
tol lay upon the Table. *Tranter* was behind *Rea-
son*, and shew'd me his Hands, and said, See how
I am us'd. *Reason* was opening the Door: I took
hold of him, and said, You must go no further;
here is Murder done. Then the Constable came in;
and I charg'd him with them. The Captain's Sword
was in the Middle of the Room broke. He lay on
his Right Side with his Arm on the Chair.

Serj.

Serj. *Cheshire*. How far was the Table off?

Waters. The whole Breadth of the Room; He lay just before the Fire-Place. I saw but one Pistol; I came in when the last Pistol went off; and I met Mr. *Reason*, and put him by with my Hand to come into the Room.

Tranter. What Wound did you see me have?

Waters. No more than in your Hand. He shew'd me his Hand,

L. C. Justice. Was the Sword in the Scabbard that was broke; and whose was it?

Waters. It was out of the Scabbard; and must be the Deceased's, because the other had his Sword drawn in his Hand. I desir'd the Constable to draw the Sword, and saw it bloody a good Way.

[*Mr. Peters sworn.*]

Serj. *Cheshire*. Will you tell the Court whither you was sent for on the 17th of *October*? and by whom?

Mr. *Peters*. On the 17th of *October* last, I think it was in the Forenoon, about Twelve o'Clock, I was sent for to visit Mr. *Lutterell*: The Messenger told me he was expiring. I came into his Room; where I found him on his Bed in a wounded Condition, and languishing of his Wounds. He seem'd desirous that I would pray to Almighty God, for his Soul; for he believ'd he had but a little Time to continue in this World, and therefore he desir'd to make the best Use of it. I was ready to assist him, and desir'd him to consider how far he might be instrumental in bringing this Misfortune on himself, I desir'd him to consider, that as a dying Man great Weight would be laid on his Words; therefore if he said any Thing not strictly true, he might involve innocent People in the Guilt and the Punishment; therefore I desir'd him to lay his Hand upon his Heart, and consider.

He told me, As a dying Man, as he expected to be try'd for this very Fact at the Bar of Heaven, as well as the Persons who had injur'd him, he assur'd me he was murder'd in a barbarous Manner. Afterwards came in one *Church*, a Bailiff in the same Street, and desir'd me to put it home to him. I did. Upon which he made me the same Answer, That he was

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barbarously murder'd. He wanted Spirits, or would have express'd himself more fully. On this I pray'd by him; and when I had done I took my Leave of him. In about an Hour afterwards I was sent for again. When I came there, I met Mr. *Vernon* and Mr. *Haines*, Justices of the Peace. One of the Justices gave Mr. *Lutterell* his Oath; and there being no Clerk there, desir'd me to take his Words in Writing; which I did. The Words were these: *The Bailiffs took the Pistols from my Table; they fir'd them twice: The fat Man drew his Sword, and run me into the Body with his Sword; and then drew my Sword, which I broke in his Hand, and begg'd for Life. I neither fir'd a Pistol, nor made one Push; they both run me through. I offer'd to pay them the Money.* I think these are the very Words he said. After this I pray'd by him again; and still desir'd that he would not lay any Thing to the Charge of People that were not guilty. I left him then, and came again a third Time; and as I was praying by him, he interrupted me, and ask'd me if it was not proper to receive the Holy Sacrament, which he was desirous to do. I ask'd him if ever he had received the Sacrament. He told me he had. I desir'd him to consider; and to assist him, I put him into a Method. I told him one Thing which was necessary, which, perhaps, he might come into with Reluctance; and that was Charity, and forgiving his Enemies. I told him he had been hardly dealt with, I believ'd; yet it did behove him, as he dy'd a Christian, to forgive them. He told me he did forgive them, and he hop'd Almighty God at the last Day would forgive their Indiscretion. He died some Time afterwards; but then in so dosing a Condition, that I could not attend him to any Purpose.

Mr. Hungerford. Did he say who fir'd the Pistol?

Mr. Peters. When I ask'd him if he fir'd either of the Pistols, I told him one of the Bailiffs was wounded, and there were two Balls taken out of his Hand. He assur'd me, as he was a dying Man, he fir'd neither of the Pistols.

Reason. Did not he confess that he had broke one of their Heads?

Mr.

Mr. Peters. No, nor any Thing like it; so far from it, that he said he did not design to hurt a Hair of their Heads.

L. C. Justice. You say you were desir'd to take the Examination? Vol. vi. p. 202.

Mr. Peters. Yes, my Lord; I did take it.

Serj. Cheshire. My Lord, I apprehended we had it ready to produce; but am told to my Surprise, that Mr. Vernon hath it, and he is gone into the Country.

Mr. Peters. My Lord, there is a Copy of it in my Deposition before the Coroner.

L. C. Justice. You have given an Account of the Examination of this Gentleman; first before the Clergyman, afterwards before two Justices of Peace: His Examination was taken and reduc'd to Writing. By Law, unless you shew you are disabled to do it by some Accident, you must produce that Writing.

[Mr. Haynes, one of the Justices of Peace, sworn.]

L. C. Justice. Did you take the Prisoner's Examination?

Mr. Haynes. My Lord, on the 17th of October last, the Prisoners were brought before me, being charg'd with the Murder of Mr. Lutterell. I understood he was not dead; and so Mr. Vernon, another Justice of Peace, went with me to Mr. Lutterell's Lodgings, where we found him in a very weak Condition, but sensible. We administer'd the Oath, in order to take the Examination in Form. My Hearing not being very good, Mr. Vernon examin'd him; but before he could perfect his Examination he fainted away, and could not go on. Then we went to my House, and examined the Prisoners, and committed them. What the Deceas'd said to Mr. Vernon and the Minister, I did not hear; so can give no Account of it.

Mr. Reeve. Had you the Paper?

Mr. Haynes. No, I had not.

Mr. Peters. I gave it to Mr. Vernon; and obtain'd it of him to shew the Coroner; and afterwards I gave it him again. I took a Copy of it, and examin'd it.

L. C. Justice. We must have the Original.

Mr. Hungerford. We hope we may read the Deposition taken before the Coroner. This Gentleman says he saw the Examination taken in the Presence of two Justices of the Peace; and the very Words of that Paper were contain'd in the Deposition taken before the Coroner.

No Evidence can be given of an Examination, but it must be produc'd in Court.

L. C. Justice. That won't do; you have not the Examination of the Deceas'd. It is ill done of *Mr. Vernon*; he ought to have attended here, and have brought the Examination into Court; and without that, we can't arrive at the Truth in this Case. I doubt you must lay aside all the Evidence of this Gentleman, for want of the original Examination.

Mr. Reeve. Suppose no Examination had been taken, we apprehend what he said would have been proper to lay before the Jury; therefore as this Gentleman gives an Account of what the Deceas'd said at another Time, (though we can't give in Evidence what he said at his Examination,) yet we may give an Account of that.

L. C. Justice. In the Court of *Chancery*, when a Person is examin'd upon Oath, and gives in a first, second, and third Answer, all these are taken but as one entire Answer. You are to be heard no more to it, because you ought to produce it.

Mr. Hungerford. We have the very Confession in our Briefs; and if we had thought it could not have been produced, we should not have open'd it.

L. C. Justice. There is an Examination too in Print that ought not to be; the Person that did it, ought to be censured: Are Juries to be prepossess'd? Here is a Printed Pamphlet, the Title whereof is, *Mr. Lutterell's Cry for Justice.*

Vol. vi. p. 207.

Mr. Justice Eyre. *Mr. Peters* should declare what he said the first and the third Time; for at the second Time he attended, the Examination was taken before the Justices.

L. C. Justice. It seems to me to be a Matter of great Consequence, if the first is allow'd without producing the second.

Mr. Justice Eyre. It cannot properly be call'd an Examination.

Mr. Hungerford. The first Time he examin'd him as a Christian; as a Minister, as to the second Examination;

mination. Mr. *Peters* had no more to do in it than as a Justice's Clerk.

L. C. Justice. The Examination taken before the Justice was to confirm the former Examination; and upon that Examination all was reduc'd into Writing.

Mr. *Justice Powis*. If the Examination in Writing related to what was said before, and perfected that, how will they ascertain the whole but by producing the Writing?

Mr. *Justice Eyre*. I don't know how to call this perfecting the former Examination: You can't call the Discourse between him and Mr. *Peters* an Examination. At the *Old-Bailly*, Evidence is allow'd to be given *viva voce* of Things said at other Times, though not of what was said at the Time of the Examination. Vol. vi. p. 204.

Mr. *Justice Powis*. What does Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters*. I beg your Pardon; it was not my Word.

L. C. Justice. Not to differ about Words: The Minister came to enquire of this Gentleman about the Circumstances of his Death; afterwards the same Minister is present when the Justices of Peace come: They desire this Minister to take the Examination in Writing. He does it, asking the same Questions he did before, designing to make the first Examination more authentick. Now, when the Examination of the Deceased before a Justice is taken in Writing by the same Person that enquired of him before, in order to perfect and consummate the former Examination, whether you will not take them as one entire Account given by the Deceased? As there is an Examination in Writing in the Presence of the same Person; and they give no reasonable Excuse why they don't produce it, there ought to be the less Credit given to them.

Mr. *Justice Eyre*. I think there is less Credit to be given; because the Examination is not produc'd; however it is Evidence.

Mr. *Justice Fortescue*. I think we should allow what was said at other Times to be given in Evidence; though not what was said at the Time of the Examination: The first was no Examination, only

only what Mr. Peters will take upon him to say pass'd between them.

L. C. Justice. Go on with your Evidence.

Mr. Reeve. Mr. Peters, you hear the Opinion of the Court; That what pass'd at the Writing of this Paper you must not take any notice of, but give an Account of what pass'd at any other Time.

Mr. Peters. I told your Lordship when I was sent for to visit him the first Time, I found him dangerously ill: After I had talk'd to him some Time, to put him in mind of Death, I desir'd to know how far he had been instrumental in bringing this Misfortune upon himself. He said, *As he was a dying Man, and expected to be judged at the last Day, they murder'd him barbarously.* I repeated it to him again, at the Request of Mr. Church a Bailiff, and the last Time I came to him, when hereceiv'd the Sacrament,

L. C. Justice. Did you ask him, if he had struck any of the Bailiffs?

Mr. Peters. I did not: But I ask'd him if he had given them any Provocation. To which he answer'd, *He had given them no Provocation.*

L. C. Justice. Did he say he gave the Bailiff that Wound?

Mr. Peters. I told him one of the Bailiffs was wounded in the Hand, and it was probable he was the Person that discharg'd that Pistol. Upon which, Vol. vi, p. 205. he assured me he fired neither of the Pistols: He neither drew his Sword, or fired either of the Pistols.

L. C. Justice. What pass'd the third Time?

Mr. Peters. As he was going to receive the Holy Sacrament, I begg'd of him to consider, whether what he had said was true. He said, *Every Article he had said, as he was a dying Man, and as he hoped to receive Benefit by the Sacrament, every Thing he said was strictly true.*

[*Mr. Sparham, the Surgeon, sworn.*]

Mr. Reeve. Give an Account in what Condition you found the Deceased.

Mr. Sparham. I found him wounded under the Right Pap with a Shot. I found several other Wounds; one near the Liver, the lower Part of the eighth Rib

Rib, near the Backbone, several other Wounds, with a Sword, three or four on his Belly. Upon opening his Body, I found that the Wound with the Bullet had penetrated about nine Inches towards his Back; which Wound was mortal. I found another Wound with a Sword near the eighth Rib, three Inches and an half broad, penetrating the Thorax, and wounding the Diaphragma, which was also mortal. I found eight other Wounds with a Sword, about a quarter of an Inch wide each, and a quarter of an Inch deep, one near the Left Pap, four others on the Right Side of the Belly, two more on each Side the Backbone.

Mr. Reeve. You look'd upon two of the Wounds to be mortal, one whereof was with the Pistol-Shot.

Mr. Sparham. Yes; I saw two Leaden Pieces taken out of his Body.

L. C. Justice. What say the Prisoners?

Reason. My Lord, we arrested the Gentleman in *Surry-Street*: He desir'd us to go to his Lodging. The Prisoner's Defence.

When we came there, says he, *Go and see for the Attorney, and I will pay the Money.* Tranter went to the Attorney for his Bill; and I went up Stairs with the Gentleman into the Dining-Room. When he came up, says he, *My Dear, I am arrested, it is for Mr. Rouse's Bill;* and began to look a little angry; went to his Scrutore, and took something out of it; and then went up Stairs and fetch'd his Pistols, clap'd one to my Breast, and threatned to shoot me. I was surpriz'd; his Lady run out of the Room, and I gave him good Words. Says he, *Sirrah, I'll let you live a little till your Partner comes back; and then I will send all your Souls to Hell together.* Then the Foot-Boy came back, and said the Gentleman was coming. He order'd the Boy out of the Room, and one knock'd at the Door. When the Boy was gone, he clap'd his Pistols one on one Side his Bosom, and the other on t'other; and my Partner coming into the Room he gave him a Blow over the Head. with that he closed in with him, and then one of the Pistols went off, and wounded him. Then he drew his Sword, and I drew mine. And then the other Pistol went off; which was the Occasion of his Death.

Mr.

[*Mr. Twice, the Attorney, sworn.*]

He depos'd, That he was employ'd by the Plaintiff, Mr. Carr, to take out a Writ against Mr. Lusterell on an indors'd Note; which he did, and gave it to Reason; who got a Warrant upon it; and that Tranter told him the next Morning they had arrested him, and came to him for a Bill of the Debt and Charges; which he gave him.

[*Mr. Time sworn, and the Warrant shew'd him.*]

He depos'd, That this was the Warrant made out on the Bill of *Middlesex*, at the Suit of Mr. Carr, and the Warrant and Bill of *Middlesex* were read.

[*Mr. Hickman sworn.*]

He depos'd, That he made out the Warrant. Mr. Hungerford. Here is a Witness in Court, one Lucas, can prove that Reason Shot off the Pistol L. C. Justice. It is irregular; you come out of Time; but if my Brothers please, we will hear it.

[*Constance Lucas sworn.*]

Vol. vi. p. 206. Mr. Hungerford. What do you know of Shooting off the Pistol.

C. Lucas. I was opposite to the Captain's Lodging, in *Swry-Street*, in a Room up two Pair of Stairs, and I heard a Pistol go off. Upon that I went to the Window; and I saw a lusty fat Man take a Pistol out of the Window in the Captain's Lodging up one Pair of Stairs, and let it off towards the Fire-side.

Mr. Strange. Can you take upon you to say it was not Mr. Lusterell?

C. Lucas. Yes; I am sure it was not he. He was a little Man.

L. C. Justice. When the lusty Man discharged the Pistol, was any Body by?

C. Lucas. No Body; that I saw.

Mr. Hungerford. The Coroner's Inquest came into this Room, and was satisfied, that from thence she might see into this Window.

Mr.

[Mr. Gifford, the Surgeon, sworn.]

Mr. Gifford. On Tuesday, the 17th of October last, about Ten or Eleven o'Clock in the Morning, I was sent for to a Gentleman, Mr. Lutterell. When I came to him, I found him sitting on a Chair, and he lean'd back with his Shirt and Cloaths very bloody. Mr. Sparham was with him, in order to look to his Wound. We put him to Bed: We found a Wound about an Inch below the Right Pap by Gun or Pistol-Shot; and we dressed it, and all the other Wounds we could find. I went into the Parlour, and there were the two Prisoners at the Bar; I was told one of them was wounded. Upon that I went to examine into it. Upon coming into the Parlour I examined *Tranter*, and there I found two Pieces of Balls, which were lodged in his Hand. We extracted the Balls. I found a small Wound in his Wrist, and a Razure on his Head: There was a small Wound which was on the Wrist; it seemed to be from a Prick, something that had entered the Skin. Then I went to Mr. Lutterell again: As he was in a good State of Sense, I asked Mr. Lutterell *Whether he had fir'd a Pistol?* I asked him several Times. He denied it a first, second, and third Time, and he used this Expression, *I call God to witness, I neither fir'd a Pistol, nor drew my Sword, but was barbarously murdered.* I was there again when Mr. Peters gave him the Sacrament, when he was asked the same Question. He then answered, *He neither did the one, or the other.* In the Afternoon Mr. Keat and I went together: He was then in a calm State, seem'd reasonable, and we asked him, *Sir, You can give some Account of this Matter; your Reason and Judgment are strong; I have heard that you fetch'd down the Pistols?* He told me, *He had; but with no malicious Design; only he would not be forc'd out of his Lodgings.* I asked him, *If there was any Blows given?* He said, *They had given him abusive Language, which induced him to strike one of them. Upon that they immediately seiz'd him; the lusty Man seiz'd him, and drew his Sword; he tumbled down, and he stabb'd him: He often begg'd them to spare his Life; the other said, Damn him, draw his own Sword, and stab him.* Mr. Lutterell's Finger and Thumb were cut,

The Trial of Reason and Tranter

cut, as if it was with grasping a Sword. Then he said, *The lesser Man took a Pistol, and clapp'd it close to his Breast; and shot him in the Body; and the lusty Man held the other Pistol to his Head, and shot it off.* Which I the rather believe, because he had some Powder-Spots or Marks on his Face.

Reason. He owned to you that he struck one of us?

Gifford. Yes; but it was upon your giving fancy Language.

L. C. Justice. When you asked him upon what Account he brought down the Pistols, what said he?

Gifford. He acknowledged he had brought down the Pistols, but with no evil Intent; but as he was willing to pay his Debts, he was not willing to be forced out of his Lodging, and be exposed.

[Mr. Bonner sworn.]

He deposed, That he came up Stairs just as Mr. Lutterell was got to Bed, and asked him, if he had fired the Pistol; and he answered, *He had no Design to do them any Harm, or make any Resistance; but they killed him cowardly and cruelly.*

Reason. After he said he had no Design to make any Resistance, what followed?

Bonner. When I came out of the Room, says Mr. Gifford to me, *Mr. Tranter is shot in the Hand: It is certain Mr. Lutterell shot him in the Hand; therefore, let us go back and ask him.* We went both of us, and asked him; and he said, *No; as God should judge him, he did not, nor had any Design of doing them any Harm; but he did threaten them several Times.*

Tranter. My Lord, I have lost the Use of my Thumb by the Shot.

[Blake, the Surgeon, sworn.]

He deposed, That *Tranter* was wounded in the Thumb of the Right Hand, and in his Left had a Wound in his Wrist.

L. C. Justice. What was that Wound on his Head?

Blake,

Blake. It seemed to be done with a Cane; the Skin was broke : And Mr. *Reason* had a little Wound in one of his Fingers, which seemed to be done with the Point of a Sword.

[Thomas Hargrave, *the Boy*, called again.]

L. C. Justice. You say, when *Tranter* knock'd at the Door, you went and let him in ; that you followed him up to the Dining-Room, and heard a little Bustle before you went in ; but the first Thing you saw when you came in, was *Tranter* running your Master against the Closet Door, and *Reason* Vol. VI. P. 207. pricking him with a Sword : I ask you, Whether when you was coming up Stairs before you enter'd the Room, if you did not hear a Blow ?

Hargrave. I heard a Blow, but did not know who struck it.

L. C. Justice. Have you any more Witnesses ?

Reason. My Lord, we have none but ourselves : We are Officers of the Court : He assaulted us, and brought down his Pistols, and stuck them in his Bosom.

L. C. Justice. Did not he afterwards take them out, and lay them on the Table ?

Reason. No, my Lord.

Tranter. The Minute I came back, when I entered the Room, he struck me over the Head with his Cane, and the Pistol went off, and shot me in the Hand.

[*The Cloaths being produced, it appeared by the Hole in the Waistcoat, that the Wound given by the Pistol under the Right Pap, could no Way happen by any Position of the Pistols in the Bosom of the Deceased, by the Pistol going off of itself.*]

Reason. My Lord, we are Officers of the Court ; and what we did was for our own Security.

Mr. *Reeve* reply'd, That by the Evidence that had King's Counsel been produced, there was Reason to think Mr. *Luttrell* Reply. had given one of the Balliffs a Blow on the Head ; but he submitted it, whether that was a sufficient Justification,

tion for the Officers to kill Mr. *Lutterell* in this Manner : That it was not pretended Mr. *Lutterell* fir'd either of the Pistols ; but that they were in his Breast, and went off themselves. Mr. *Lutterell*, indeed, had own'd he threaten'd them ; but if he did, he had not the Pistols in his Power ; one was on the Table, and the other in the Window ; and the Maid, before either of the Pistols was fired off, saw Mr. *Lutterell* on the Ground on his Back, and his Hands lifted up, and the Bailiffs stabbing him : And it appeared impossible that the mortal Wound he received could be given him by the Pistol in his Breast. He submitted therefore, upon the Whole, whether it was a sufficient Justification, though they were Officers of Justice, and ought to be protected, supposing such a Misbehaviour : Where there was no Necessity for it, they were not to be justify'd.

L. C. Justice. If they have done nothing but what was proper to secure their Prisoner, and their own Lives when they were assaulted, they are not guilty of Felony.

Mr. *Reeve.* We must submit it, whether a Man striking another over the Head be a Justification for him immediately to kill him.

Mr. *Hungerford.* My Lord, here is a Man's Life taken away by two Persons that had a Precept from a Court of Justice to arrest. The only Thing they had to do was to secure the Person, and make him answerable to Justice ; and whether this could not be done without all this Outrage ? whether Officers of Justice may execute their Process with so much Cruelty ? It amounts to as great premeditated Malice, as can be conceived.

Croke, Car. 131. There is Malice contained in Cruelty. In *Holloway's* Case there was a Provocation ; but the Judge entered into the Fact, and questioned whether the Provocation was sufficient to justify killing the Boy. And there is the Case of *Mawgridge*, reported by the Lord Chief Justice *Holt*. There was a Provocation : *Cope* had turn'd *Mawgridge* out of the Room ; and yet this was not held a sufficient Provocation ; and it was a very just Observation of my Lord Chief Justice *Holt's*, That when Cases were attended with so much Cruelty and Barbarity, Malice should be implied. It appeared here, that there were nine Wounds

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p. 119.
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Wounds, eight besides that with the Pistol; and certainly two lusty Men, as the Prisoners at the Bar were, might have made him answerable to Justice without that barbarous Treatment.

Mr. *Strange*. My Lord, if Mr. *Lutterell*, at the Time they assaulted him with a Sword, had held his Pistols in his Hand, and their own Lives had been in Danger, the Case had been different; but as they were between him and the Pistols, so that it was impossible he could do them any such Harm, they are the less excusable for what they did.

L. C. Justice. You mentioned the Case in *Keyling*. You may remember there a Blow was a Provocation; and if a Blow be first given, it will not be Murder though Death doth ensue upon it.

The Lord Chief Justice, in summing up the Evidence, made the following Observations. He said,

HE should have been very glad, if the Examination, that was reduced to Writing, had been produced: That Mr. *Peters*, indeed, was a worthy Person; but, as he swears upon his Memory, he might mistake; and a Mistake of a few Words might alter the Sense: And it was strange, that of two Justices, the one appear'd, and the other, Mr. *Vernon*, with whom the Examination was left, did not appear, nor had any Endeavours been used to have him there; and, therefore, it must be an Objection, That the Prosecutor had not produced the Evidence that was proper, but relied on the Memory of the Witness. This seemed to affect the Evidence given by Mr. *Peters*.

Lord Chief Justice's Observation on the Evidence.
Vol. vi. p. 209.

That as the Prisoners had been so civil on the Arrest, as, at Mr. *Lutterell*'s Request, to carry him to his own Lodging, that Circumstance, he confess'd, made some Impression on him: It was what Bailiffs were not bound to do; they were usually rough, and not easy to be entreated, unless well paid for it; they were too favourable in trusting him in his own Lodging: And it was still a greater Piece of Civility, to send *Tranter* for the Attorney's Bill, and leaving *Reason* with him alone; he might have sent his

Vol. vi. p. 210.

his own Servant. This was extreme civil Usage, and was not often done by Men of their Character: Nay, *Reason* suffers him to go up Stairs into another Room, when his Partner was gone: This shews excessive Favour to their Prisoner, which they could not in Strictness justify: And Mr. *Lutterell's* bringing down a Brace of Pistols seemed to be an untoward Return for their Civility. Indeed the Maid-Servant depos'd, That he said *he had no Malice towards them, and would not hurt a Hair of their Heads; he only brought down the Pistols, that he might not be imposed on:* But he did not know what he meant; when he was in Custody of the Officers, and had been so civilly used, to bring down a Case of Pistols, to prevent his being ill used: It seems as if he intended to affright the Officers, that they should not carry him away. It was the Duty of the Bailiffs to carry him off, and he brought down the Pistols to prevent that; and he owned, that he gave one of the Bailiffs a Blow on the Head with his Stick; and the Bailiffs say, in their Justification, that the Assault begun on his Side. It was strange, that *Tranter*, immediately after he came back, should run him against the Wainscot, and *Reason* assault him with a Sword, without a Provocation. This Behaviour was not of a Piece with the other. He thought, it appeared by the Evidence, beyond Contradiction, that the Pistols were brought down with a Design to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick.

Upon the Whole, He thought it was plain, that the Prisoners at the Bar did kill Mr. *Lutterell*; that when *Tranter* had him against the Wall, *Reason* stabb'd him; and when he was lying on the Floor, *Reason* stabbed him; and it appeared by another Evidence, that *Reason*, 'the fat Man, shot off a Pistol; so that he made no doubt but the Prisoners at the Bar did give Mr. *Lutterell* those Wounds of which he died. The Surgeons had deposed, that there were eight or nine Wounds with a Sword, one of them mortal; and a Wound with a Bullet, that was mortal.

Then the Question was, Whether upon this Evidence, the Defendants were guilty of Felony? And if

if guilty, then in what Degree? whether Murder or Manſlaughter?

Bailiffs were Miniſters of Juſtice, armed with the Authority of the Law; and thoſe who reſiſted a Bailiff in the Execution of his Office, reſiſted the Law: And in executing their Warrants, and doing what was neceſſary for that Purpoſe, for the obtaining their Priſoner, or for the Security of their own Perſons, if Death enſued, the Bailiffs having the Authority of the Law on their Side, it was not ſo much as Felony: And it was neceſſary it ſhould be ſo; for without it, all their Properties would be precarious.

Here is Mr. *Lutterell* under an Arreſt, fetches Vol. vi. p. 212
down his Piſtols to prevent his being carried off, and threatens the Bailiffs; he doubted his Threatning muſt have Reference, that he threatened to diſcharge his Piſtols, or draw his Sword upon them; and he did not only threaten them, but gave one of them a Blow with his Cane; whereupon *Tranter* runs him againſt the Wall, and *Reaſon* ſtabs him. Now, when Piſtols are brought down, Threatnings uſed, and a Blow given, the Officers are not to ſtand ſtill till they are murdered: They could not tell what Mr. *Lutterell's* Intention was; as he had made an Appearance of Reſiſtance, and had made an Aſſault, the Jury were to conſider, whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner? The Maid ſaid, indeed, when the Piſtols were brought down, at her Perſwaſion her Maſter laid them on the Table, which was an Indication, that no ill Uſe was to be made of them; and it did not appear whether one or both of them were in Mr. *Lutterell's* Reach: But then it appeared, (I don't ſee where,) that notwithſtanding the running him againſt the Wall, he had in ſome meaſure reſcued himſelf from that Force; and there was Struggling and Throwing-down; which ſhew'd that he was not ſo in the Power of the Bailiffs, that they could be ſecure of preſerving their Priſoner, or their own Lives. That it muſt be left to the Jury, whether they believed Mr. *Lutterell* had a Deſign to reſcue himſelf; and if they thought the Bailiffs had a juſt Provocation, and were apprehenſive of loſing their Priſoner, the Law allowed them to do what was neceſſary for their own Security;

rity, and the Security of their Prisoner ; but if they thought this was done out of Heat and Passion by the Bailiffs, when there was no just Cause to apprehend the Prisoner's being rescued, then they were guilty of Felony. He confess'd it look'd barbarous, that when a Man was in his Blood on the Ground, they should follow their Blows, giving him more Wounds ; this was carrying the Thing a great Way, and look'd like Barbarity : But if Mr. *Lutterell* gave the first Provocation, whatever happened afterwards, if done for the Security of their own Lives, and of their Prisoner, would not make them guilty of Felony.

It appear'd, that Mr. *Lutterell* had given a Blow : Men of Honour were not to justify themselves by saying sawcy Language was give them ; and therefore they would be their own Avengers. That to make it Murder in the Bailiffs, it must appear to be done maliciously, and without Provocation : That Blows had always been allowed to be Provocations ; and in this Case it was accompanied with fetching down Pistols, and threatening the Bailiffs what he would do ; and if so, the Bailiffs would not be guilty of Murder, but Manslaughter : That they were to assert the Authority of the Bailiffs ; but then they must not encourage the Bailiffs on a few angry Words, immediately to fall into a Passion, and take away the Life of a Man. It appear'd, that a Blow had been given under untoward Circumstances, after the Bailiffs had been threatened with a Design to prevent his being carried off by them ; and if so, the most they could make of it would be Manslaughter.

The Prisoners
found guilty of
Manslaughter.

The Jury being withdrawn, returned about an Hour afterwards, and brought in their Verdict, That the Prisoners were both guilty of Manslaughter. Whereupon they pray'd the Benefit of their Clergy, and were immediately burnt in the Hand.

**The TRIAL of JOHN WOOD-
BURN E, of Bury St. Edmund's,
in the County of Suffolk, Labourer;
and ARUNDEL COKE, alias COOKE,
of Bury St. Edmunds aforesaid,
Esq; at the Assizes held there on
March 13. 1721.**

The Indictment sets forth,

THAT the Prisoners not having the Fear of The Indictment
God before their Eyes, &c. after the 24th of Vol. vi. p. 212.
June, 1671. viz. on the First of January, 8 Geo.
at *Bury St. Edmund's* aforesaid, did, on Purpose,
and of Malice forethought, and by lying in Wait,
make an Assault unlawfully and feloniously upon
Edward Crispe Gent. and that the Prisoner *John*
Woodburne with a Bill, which he then had in his
Right Hand, did on Purpose, of Malice fore-
thought, and by laying in Wait, slit the Nose of
the said *Edward Crispe*, with an Intent, in so do-
ing, to disfigure the said *Edward Crispe*; and that
the Prisoner *Arundel Coke*, at the Time of com-
mitting the said Felony, on Purpose, and of his
Malice forethought, and by lying in Wait, was
unlawfully and feloniously present, aiding and
abetting the said *John Woodburne* to commit the
said Felony, against the King's Peace, and the
Statute in that Case made and provided.

Mr. Lee, of Counsel for the King, opened the Mr. Lee.
Indictment; and afterwards Mr. Serjeant *Selby*, Mr. Serjeant
another of the King's Counsel, *pro hac vice*, open- Selby Counsel
ed the Evidence: The Prisoners, he observ'd, were for the King, &
indicted upon the Statute of 22 Car. II. the one pen'd the Evi-
for maiming and disfiguring of *Edward Crispe*; dence.
and the other for abetting that Fact, which, by Vol. vi. p. 213
the Statute, was made one and the same Offence:
That his Majesty, as the Father of his People,

and for their Safety, had been pleas'd particularly to regard this Prosecution for so horrid and bloody an Assassination; and though it was difficult to stand in that Place without the greatest Tenderness for their Fellow-Creatures, yet those Men who had divested themselves of all Humanity, ceased to be such. It was Cruelty to the King's People not to stand up against them, so far as was consistent with Law and Justice: Their Prosecution was become the common Concern of Mankind; for so long as these Prisoners had a Being here, the Life of every Man was precarious, and but at the Will of so infernal a Contriver as the one, and so hellish an Executioner as the other: That the first Witness they should produce was Mr. *Crispe* himself, who, by a particular Providence, had surviv'd this horrid Attempt, and was present in Court to give Evidence of it.

[*Here the Serjeant gave an Abstract of the following Evidence.*]

Mr. Serjeant *Brantwait*, who was also Council for the King on this Occasion, observ'd, That by the Stat. 22 *Car. II.* if any Persons, on purpose, and of Malice aforethought, and by lying in wait, should unlawfully cut out or disable the Tongue, put out the Eye, slit the Nose, &c. with an Intention in so doing to maim or disfigure, the Persons so offending, their Counsellors, Aiders, and Abettors, knowing thereof, were Felons without Benefit of Clergy: That the Fact the Prisoners were indicted for, was attended with such Circumstances of Inhumanity and Baseness as cou'd not be parallell'd, as wou'd appear by the Evidence. [*Here the Witnesses were call'd.*]

[*Mr. Edward Crispe sworn.*]

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The Evidence for
the Kings

Serj. *Selby*. Mr. *Crispe*, give an Account of the whole Matter to the Court.

Crispe. On New Year's Day last I was invited to sup at Mr. *Coke's*; and being there before Supper, he propos'd to me to go to Mrs. *Fanny Monk's*. We sup'd about Seven; and after Supper, about Ten o'Clock, he call'd me out of his Parlour. I follow'd him. We went into the Church-Yard.

It

It was then very dark, the Moon did not shine. He took three Turns before the House where Mrs. Monk dwelt; then he stood still, and hollow'd. I was afraid, and made up towards the Wall, but in a Quarter of a Minute some Body came behind me, and knock'd me down. I cannot tell what was done to me afterwards, for on that Blow I lost my Senses. After some Time I came to my Senses, and return'd to Mr. Coke's, where I was ready to faint and die. They found me very much wounded.

L. C. Justice. Was Mr. Coke by when the first Blow was given you?

Crispe. Yes, he was.

Coke. Do you remember that you saw me?

Crispe. You were close by me when I was knock'd down.

[*Mr. Brown sworn.*]

Serj. Selby. I think you are a Relation of Mr. Coke's?

Brown. Yes, Sir; I married his own Sister, and he married Mr. Crispe's Sister. A Day or two before last New Year's Day, I and my Wife and Daughter were invited to sup with Mr. Coke; and accordingly we went. I came about Six o'Clock, and found Mr. Coke and Mr. Crispe drinking a Glass of Wine in the Parlour before Supper. The Women were above Stairs, I sat down with them; and we three staid in the Parlour till Supper Time: When Supper was ready, we went up Stairs. After Supper, between Eight and Nine, we three came down into the Parlour again. Some Time after Coke went out of the Room, and then came back and beckon'd to Mr. Crispe, who follow'd him out of the Room. Mr. Coke was gone about ten Minutes, and then return'd. He seem'd to be out of Breath, as if he had walk'd faster than ordinary. He drank a Glass of Wine to me; and after he had sat some Time he went out of the Room. I heard a Noise up Stairs; and being told my Daughter was ill, I went up, and in a little Time came down again into the Parlour, where I found Mr. Coke. I ask'd him what was become of Mr. Crispe, he told me he believ'd he was gone home in the dark. In about two or three Minutes after Mr. Crispe came

The Trial of Woodburne and Coke

in very much wounded and bloody. I was so surpriz'd, that I could not take particular Notice of him.

Mr. Raby. How long was it from *Crispe's* going out, to his coming in again?

Brown. It was near half an Hour.

Serj. Selby. Did *Mr. Coke* see *Mr. Crispe* when he came back to his House?

Brown. Yes; and seem'd to be in a great Consternation.

Mr. Raby. Pray *Mr. Crispe* would any Estate have come to *Mr. Coke* by your Death?

Crispe. In case I had died, one hundred Pounds *per Annum* would have come to his Wife, as one of my Sisters. I have no Children: My next of Kin are three Sisters, one of which is *Mr. Coke's* Wife.

[*Mr. Sturgeon, the Surgeon, sworn.*]

Vol. vi. p. 215. *Serj. Selby.* What do you know concerning the wounding *Mr. Crispe*?

Sturgeon. I was sent for the First of *January* last, about Eleven at Night, to *Mr. Crispe*, who was at *Mr. Coke's* House. I found him very much wounded, and in a weak Condition. He had lost a great deal of Blood. I examin'd his Wounds: One Wound begun at his right Ear, divided the fleshy Part of his Cheek, and ended on his Upper-Lip, just under his Right Nostril: The Flesh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Nostril, and made an oblique Cross over the Wound, and ended near the Right Under-Jaw.

Serj. Selby. Was his Nose slit?

Sturgeon. The Nose was cut from without into the Nostril: The Edge of the Nose was not cut through, but there was a Cut or Slit in the Nose that went through. I sew'd it up; it was, indeed, but with one Stitch; it is yet visible; and the Nose was cut through. There was another deep Wound under the Chin, that reach'd from one Jaw to the other; and another Wound, that began at his Chin, cross'd the Left Under-Jaw, and tended towards his Ear. There was also a small Wound on his Left Cheek; another on his Upper-Lip; and another on his Left Temple. There were seven distinct Wounds; and

and I take it every one of the seven Wounds had a distinct Blow.

Serj. *Selby*. With what Instrument did you apprehend those Blows were given?

Sturgeon. It was cut so clean, that I thought it was done either by a Knife or Razor.

L. C. Justice. Let the Jury see Mr. *Crispe's* Wounds.

[*Here his Face and Wounds were shewn to the Jury.*]

[*Charles Willet, the Constable, sworn.*]

Serj. *Branthwait*. What do you know of *Woodburne's* Confession?

Willet. After *Woodburne* was committed, I was with him, and ask'd him whether he was concern'd in the wounding of Mr. *Crispe*. He said he was; and that he struck *Crispe* three or four Blows before *Coke* left him. He said further, that he was walking up and down in the Church-Yard when *Coke* whistled to him; and on that Signal he went and assaulted Mr. *Crispe*.

Serj. *Branthwait*. Did he say where he waited before the Fact was done?

Willet. He told me he was desir'd by Mr. *Coke* to be up and down in the Church-Yard about Nine o'Clock that Night; and it being a cold Night, *Coke* gave him a Bottle of Brandy, and told him, he could not tell what Time *Crispe* would come home; but desir'd him to be ready, and to stay, let it be never so long.

Serj. *Branthwait*. Did he tell you with what Instrument he did it?

Willet. He said he did it with a Hook, or Bill, that was new ground for the Purpose, and it lay in his House on the Right Hand of the Door. I went according to his Direction, and found it, and brought it him; and he said that was the Hook, that I have now in my Hand.

[*William Wetherell, the Gaoler, sworn.*]

Serj. *Raby*. Give the Jury an Account of what you know of this Matter.

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Wetherell. The Day after Mr. Coke was committed to me, he sent for me to his Chamber, where his Wife was crying, and in great Disorder, as he seem'd to be likewise. She was desiring her Husband to discover. When he came to himself, he told me, that he and *Woodburne* had had a Design to murder Mr. *Crispe*, and had attempted it several Times, and desir'd me to go and secure *Woodburne*. I went to the Alderman, and told him of it; and he gave me the like Orders. Coming from the Alderman, I met Mr. Coke's Man, who ask'd me whether I had found him. I ask'd him what he meant, thinking he had been ignorant of his Master's Confession; but he said his Master had discover'd it to him, and had sent him to take up *Woodburne*; and whilst we were talking, we saw *Woodburne* coming up; and desiring *John Carter*, a Smith, to assist us, we took *Woodburne*.

L. C. Justice. Did Mr. Coke confess any Thing to you concerning this Fact?

Wetherell. Yes; he told me several Times, that he had a Design to murder *Crispe*; and that he employ'd *Woodburne*, and deliver'd *Crispe* into his Hands. He told me also, that it was done with a Hook; and that he bid *Woodburne* cut his Weafand or Windpipe; and that if *Woodburne* had not been a cow-hearted Dog, he would have done so, and secur'd *Crispe* from telling Tales.

Mr. Raby. Did Coke tell you how he effected this?

Wetherell. He said he called Mr. *Crispe* out of his House, went into the Church-Yard with him, and there he delivered him into *Woodburne's* Hands; and when *Woodburne* struck him, Coke said he went away immediately.

Mr. Raby. What have you heard *Woodburne* say concerning this Fact?

Wetherell. I heard *Woodburne* say that he and Coke had lain in wait several Times, and at several Places, to murder Mr. *Crispe*.

Mr. Raby. Did he give an Account what he did at this Time to Mr. *Crispe*?

Wetherell. Yes; he said he struck him a Blow with his Hook; and not striking him quite down, he gave him a second Blow, which did: And that *Crispe*, as he was falling, (though never used to
swear

swear,) cried out, *God damn him* ; and that then it went to his very Heart to think that he should kill a Man with an Oath in his Mouth. He said he gave him several Blows, and thought he was dead,

[Robert Moone sworn.]

He deposed, That about three Years since Mr. Coke sent for him, and told him, *He wished Mr. Crispe out of the World: He was a good-for-nothing Fellow. His Wife had a Trick of playing away his Estate, and he wish'd some Body would knock him on the Head.* Whereupon the Deponent demanded, what Advantage that would be to him : Coke answered, *A very good Estate* ; and, after a little Time, said, *he did not value giving ten or twenty Guineas to knock him on the Head.* And the Deponent reply'd, *He would not kill the greatest Villain in the World for ten such Towns as Bury.*

Mr. Lee. How came you to remember this ?

Moone. When I heard this Fact was committed, it came fresh into my Memory.

[Carter, a Blacksmith, sworn.]

He deposed, That *Woodbourne* came to him on the Friday before *New-Years-Day*, and told him his Master Coke wanted to speak with him ; that the Deponent went to Coke's House thereupon, and he sent for him up into his Chamber ; and Coke ask him, *How he went on ? That he heard the Deponent had no Iron or Coals, and was afraid of a Gaol ; but he had a Thing in Agitation, that would make a Man of him as long as he lived : And asked him, If he could keep a Secret ?* To which the Deponent answered, *As well as any Body, to serve himself and his Friend.* Then Coke said, *Do you think you could cut five or six Mens Heads off, without Scruple of Conscience ?* The Deponent answered, *That was too much for a Man's Conscience to bear.* Coke answered, *Do you scruple such a Thing as that ? There are Men that have done ten Times worse. I suppose you mean the South-Sea Gentlemen,* answered the Deponent. Yes, said Coke ; *They have ruin'd Families, and beggar'd Gentlemen : To cut Mens Heads off, is but a Trifle to it ; and asked the*

The Trial of Woodburne and Coke

the Deponent, *If he could not cut off one Man's Head?* He answering *No*; Coke said, *If he would not cut off a Man's Head, and lay it down upon the Table before him, he was not for his Turn.* That Coke afterwards gave him a Glass or two of Brandy, and bid him go home and consider of it two or three Days; and *if he could cut off a Man's Head without Scruple of Conscience, he should have Plenty of Gold and Silver, and any Thing else he asked.* The Deponent answered, *He needed no Consideration, he could not do it.* Then Coke bid him send Woodburne to him; and he sent him in to Mr. Coke.

Serj. Selby. Did he say any Thing to you about Crispe?

Carter. I live in a House of Mr. Crispe's; and Mr. Coke was formerly his Steward; Woodburne acted under him. Mr. Coke said, *He heard my House was out of Repair; That it would be his after Mr. Crispe; and asked, If I should not like it better for him to keep it in Repair, as he had done before?*

Vol. vi. p. 217. Serj. Selby. I think, my Lord, we have sufficiently proved Mr. Coke and Woodburne to be guilty, not only within the Intention, but the Letter of the Statute of 22 Car. II. upon which they stand indicted. We have proved the Malice premeditated and forethought; the Intention to maim and disfigure, by flitting the Nose, (for Mens Intentions were to be construed by their Actions;) and the Maiming and Disfiguring accordingly; and that Mr. Coke was privy thereto, and the Aider and Abettor of the Offence: And I can't doubt but the Gentlemen of the Jury will find them both guilty; in which they will have the Suffrage of all Mankind.

Vol. vi. p. 218. L. C. Justice. Woodburne, What have you to say for your self?

Woodburn's Defence.

Woodburne. May it please your Honour, my Lord, the first Time that Coke began with me about this Matter, was on a Wednesday in last Barley-Harvest. He sent for me to mend his Copper; and after I had done it, he bid me go to the further End of the Mill-Lane, and there he must speak with me; and which came first, should stay for the other. I was there before him. When he came, he was on Horseback, and his Horse kicked about in a furious Manner, that the People took Notice of it. When they were gone, he told me that he had a Thing for me to do, but

but not to be done presently ; and that if I did it, I should want for nothing. I ask'd him what it was : He said, about Mr. *Crispe*, to set him aside, that is, to kill him : But he said it was not to be done presently ; so he put his Hand in his Pocket, and gave me Eighteen-Pence. I told him I never did any such Thing in my Life : I could not do it. Said he, it is not to be done presently ; we have Time to consider. A while after he sent for me again ; and asked me, whether I had considered of it. I told him, I could not do it. Said he, we must set *Crispe* aside ; for Mrs. *Crispe* hath got a Trick to play, she will make away what there is for me and my Child. I said, I never did any such Thing ; I could not do it ; and desired him to forbear. I went away, and left him in his Chamber. Within a while after he came to my House : He said, *John*, what is the Reason you can't do this for me ? Said I, I cannot do it. Said he, what signifies it, I would do it for you. I said, I could not do it. Then he went away very uneasy ; and in a Week or Fortnight sent for me again to his Chamber, and there was at me again. I told him, I could do no such Work. Said he, why can't you do this Work ? I have been a good Master to you ; I made myself look little to bail you, when you were in Gaol. I turned about, and cried. Said he, what makes you cry ? Your crying signifies nothing ; the Money that I shall give you, will do you and your Family a Kindness. Said I, I can do no such Thing. Said he, it signifies no more the killing of him, than to kill a Dog ; for they do no good with what they have. Yes, said I, Mr. *Crispe* is a very good Master ; I work'd for him, and his Father before him ; and so I went away. Afterwards my Wife died three Days before *Gun-Powder Treason* last : She was buried on that Day ; and being very poor, I sent my Daughter to desire a little Money of him, to have the Bell tolled for my Wife ; but he sent me none. My Wife was buried on a Sunday ; then on the Monday he sent his Boy for me. I went down to him, and when I came, I fell a weeping for the Loss of my Wife, and having ten Children. Said he, what makes you cry ? You must pull up a good Heart ; though your Wife be dead, you may have Friends : Here is that which will do you a Kindness hereafter. Said I, I am

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am very sorry for the Loss of my Wife. Said he, what signifies that, she was carried well into the Church, and is no doubt happy : She is gone before you ; we must all go in our Time. I was a Friend to you in her Illness : I sent her a good Doctor at my own Charge. This twenty Pounds that I will give you, will be a brave Estate for you.

L. C. Justice. What were you to have this twenty Pounds for ?

Woodburne. It was to kill Mr. *Crispe*. He told me that I must set aside Mr. *Crispe* : He offered me twenty Pounds to do it ; but I then refused it. On Monday, *New-Year's-Day*, in the Morning, *Coke* sent his Boy for me to come to him ; and between Eight and Nine in the Morning, I went to him : He was in his Green-Room. Now, said he, *John*, we shall have the fairest Opportunity to kill Mr. *Crispe*. I told him I was loth to do it ; it was very cold, and I had an Ague. Said he, I will give you that which shall warm you. He went to his Closet, and gave me out of the Bottle that he used to carry in his Pocket half a Pint of Brandy ; and told me, that happen how it will, I must not come near his House any more that Day, lest afterwards there should be some Suspicion ; but, said he, whether Ague, or not, you must be at Mr. *Morrice's* Porch, which is in the Church-Yard, about Eight o' Clock in the Evening. I went there between Eight and Nine : About Nine *Coke* came out, and gave me a Whistle. On that I went up to him : He told me Mr. *Crispe* was very jolly, and he believed it would be late before he came out. I told him, I did not care to stay. Said he, you must stay now : This is the Time that will do it. I stay'd till Ten o' Clock. Then he came to me again in Mr. *Morrice's* Porch, and told me, that he believ'd *Crispe* would not go till Eleven o' Clock ; but the later the better. Then he went from me again ; and a little Time after Ten *Coke* and *Crispe* came out together ; and on *Coke's* Whistling, I came up to them. *Crispe* was then before, and coming to get against the Wall. I came up to *Coke*. He bid me have a Care, not to hit him instead of *Crispe*, being very dark ; so he took me by the Sleeve to lead me up to *Crispe* ; and said to *Crispe*, Brother, stand still. On that I hit him two Strokes with my Hook. Though I never heard him swear before, yet he now swore,

swore, *God damn him*. On that *Coke* said, What! doth he swear? Secure him; down with him. He stood by him till I gave him several Blows, and then he went away. *Coke* desired me to take away his Watch; for, saith he, as to his Money, he don't carry above Half-a-Crown, or three Shillings in his Pocket; and when I go to *London*, I will sell the Watch for you.

L. C. Justice. What *Woodburne* saith against *Coke*, is no Evidence against him, and shoud' not have been mention'd; but what he saith in relation to himself before the Fact, is so twisted with *Coke*, that without the whole it is not so intelligible as to himself: However, the Jury are to take notice, that what *Woodburne* saith is only Evidence against himself, and not against Mr. *Coke*. When you had given him those Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done; and went to my own House, where I was about to take a Line and Hang my self. Here are my two Daughters, I desire your Lordship wou'd hear them.

[*Anne Woodburne sworn.*]

She depos'd, That on *Wednesday* before *New-Year's-Day*, *Coke* sent his Boy for her Father twice: That he was sick a Bed of an Ague, and refus'd to go then; but on *New-Year's-Day*, being *Friday*, he went; and came home again. That about Six the same Evening her Father went out with a Hook in his Hand, and said he should not be at home till Eleven or Twelve at Night; and if any Body came for him, he bid them take no notice he was not at home. That they thought he took his Hook to cut some Wood: That when her Mother died, she went to Mr. *Coke*, to borrow five Shillings, to have the great Bell toll'd for her; but *Coke* said, *What signified the Ringing of the Bell, her Soul won'd be never the better for it? But if her Father won'd do what he desir'd, he shou'd have five Times five Shillings.*

[*Sarah Woodburne, the other Daughter, sworn.*]

She depos'd, That *Coke* frequently sent for her Father at all Times of the Day and Night, and often came

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came to him; and they walk'd together in the Back-side; and after the Fact, *Coke* sent his Boy for her Father; and the Boy said, They must not go together, because People would take notice of them.

L. C. Justice. Have you any Thing more to say?

Woodburne. This Day nine Weeks, being a Week after the Fact was committed, *Coke* sent for me, and said, John, *I wish you had done the Thing I order'd you; but you have been before Alderman Wright and the Recorder, and have told your Story well; but hold you fast, they will examine you again.*

L. C. Justice. This is subsequent to the Fact, and is not Evidence against *Coke*. If you *Woodburne* have done, Mr. *Coke*, What have you to say for your self?

Coke's Defence.

Coke. My Lord, I am much ashamed, and very unable to defend myself: I am ashamed to think I should be concerned in so heinous a Crime against Mr. *Crispe's* Life: I am even confounded at it. It is indeed a very great Crime, and I know not what to say for myself; but *Woodburne* has asserted against me several Things that are false. When I first spoke of this Matter to him, he said, *He should value it no more than the cutting off the Head of a Dog.* I did indeed go out with *Crispe* that Night; but I was not near him when *Woodburne* struck him, but retreated to my own House in a Moment. My Lord, there may a Point of Law arise on the Statute on which I am indicted, with regard to my Intention.

L. C. Justice. Your Intention is Matter of Fact: It must be tried by the Jury, whether your Intent was to maim and disfigure; if any Point of Law arise, you shall have Counsel to speak to it: But whether you slit *Crispe's* Nose with an Intention to disfigure him, is Matter of Fact.

Coke. My Intent was to kill Mr. *Crispe*, and not to maim or disfigure him.

L. C. Justice. Suppose your Design was to kill; yet your Design might be likewise to maim; and this the Jury must try.

Coke. This is a very penal Statute; and I cannot argue it myself. I hope your Lordship will assign me Counsel. This is the very first Indictment that ever was upon this Statute.

L. C. Justice.

L. C. Justice. What do the King's Counsel say to it?

Serj. Selby. After so full an Answer as your Lordship has given, it is needless to say any Thing. *Woodburne* cou'd not intend to kill him with such an Instrument, without intending to maim him first; and therefore if there were two Intentions, and but one executed, there was no Pretence to say, That what was executed, was not intended. *Mr. Coke* says, There never was an Indictment before upon this Statute; if not, it must be because no Man before ever thought of being guilty of so horrid an Action.

The Lord Chief Justice, on summing up the Evidence, observ'd, That the Question on this Indictment was, Whether *John Woodburne* did, on purpose, and of Malice forethought, and by lying in wait, unlawfully slit the Nose of *Edward Crispe*, with an Intention to maim or disfigure him therein? And whether *Arundel Coke* was feloniously present at the Fact, aiding and abetting *Woodburne* in the Commission and Perpetration of it?

Vol. vi. p. 220.
Lord Chief Justice's Observations on the Evidence.

[Here the Chief Justice repeating the Evidence already given, afterwards observes;] Vol. vi. p. 221.

THAT *Woodburne* in his Defence did not deny the Assaulting and Wounding of *Mr. Crispe*; but insisted, that what he had done was by the Solicitation and Procurement of *Mr. Coke*, which was no Justification or Excuse; for no Man was to obey the unlawful Commands, or hearken to the illegal Advices of any other Person whatsoever. That the Defence *Coke* had made, which wou'd serve also for *Woodburne*, was, That they intended to murder and not to maim; and if they did maim, it was with an Intention to kill, and not to disfigure.

That this Attempt on *Mr. Crispe* was designed, Vol. vi. p. 222.
malicious, and by lying in wait, the Evidence was very strong. There was also very strong Evidence given, that the Nose of *Mr. Crispe* was slit by *Woodburne*, and that *Coke* was present in the same Design with *Woodburne*: But what was chiefly insisted on, by way of Defence, was, That the slitting of *Mr. Crispe's* Nose was not with an Intention in so doing to maim or disfigure him; and if it was not

not with that Intent, then the Prisoners wou'd not be guilty upon this Indictment.

That in other Felonies, as well as this, it was the *Intent* of the Party that made the Crime: Burglary was the breaking open a House in the Night Time, with an *Intent* to commit a Felony; though no Felony be committed, yet if there was *Intent* to do it, it was Burglary; which Intent was to be tried by the Jury. Larceny or Theft was the taking away another Man's Goods with an *Intent* to steal; if it were without such an Intent, it would only be a Trespass, and no Larceny; but whether it was with such an Intent, or not, was a Matter of Fact to be enquired into and determined by a Jury. The Intent was so necessary in all Felonies, that a Person who had no Intent or Design, as a Madman, Lunatick, Infant, &c. cou'd not commit Felony for that very Reason, because he cou'd not have any Intent or Design in his Actions.

And the *Intent* of the Party was to be discover'd by the Facts themselves; by the precedent Concomitant and subsequent Circumstances of the Facts; by the Manner of doing, and the like.

What Homicides are Felony, and what not.

There were some Cases where an unlawful or felonious Intent to do an Act, might be carried over to another Act, done in Prosecution thereof; and such other Act would be Felony, because done in Prosecution of an unlawful or felonious Intent: As where a Man shoots at Wild Fowl, wherein no Man had a Property, and by such shooting, happens unawares to kill a Man; this Homicide was not Felony, but only misadventure or Chance Medley, because it was an Accident that happen'd in the doing of a Lawful Act: But if this Man had shot at a Tame Fowl, wherein another had Property, but not with Intention to steal it, and by such shooting had accidentally kill'd a Man; he would then have been guilty of Manslaughter, because done in Prosecution of an unlawful Action, *viz.* committing a Trespass on another's Property: But if he had an Intention to steal this Tame Fowl, then such accidental killing of a Man would have been Murder, because done in Prosecution of a felonious Intent, *viz.* an Intent to steal. So a Man of Malice intends to burn one House; and in execution thereof happens to burn another House: This is a malicious and

and felonious burning of this other House, because sprung out of a malicious and felonious Intent. The like might be instanc'd where Poison was intended to be given to one Person, and another takes it, and eats it, and thereby dies. And there were other Cases of the like Nature, where Actions done in Prosecution of felonious Intents, participated of the Nature of their Original from whence they spring.

That the Indictment on this Statute was for a certain particular Intent, for purposely, maliciously, and by lying in wait, slitting Mr. Crispe's Nose, with an Intention in so doing to maim or disfigure. As to the Fact of slitting the Nose, that was directly and positively sworn; there cou'd be no doubt but it was an unlawful Slitting; but the Defence the Prisoners made, was, That if they did slit the Nose, it was with an Intention to kill, and not with an *Intention* to maim or disfigure. Now if the Intention was to murder, they were to consider whether the Means made use of to accomplish that Murder, and the Consequences of those Means, were not in the Intention and design of the Party; and whether every Blow and Cut, and the Consequences thereof, were not intended, as well as the End for which it was alledg'd those Blows and Cuts were given. Vol. vi. p. 223

And if they were satisfied on the Whole, that Woodburne did on Purpose, and of Malice forethought, and by lying in wait, unlawfully slit the Nose of Edward Crispe, with an Intention in so doing to maim or disfigure; and that Arundel Coke was feloniously present at the Commission of this Fact, and aiding and abetting therein, they wou'd find them guilty: But if this was not found to their Satisfaction, they were to acquit them.

[The Jury being withdrawn, return'd about half an Hour afterwards, and brought in their Verdict, that the Prisoners were Guilty. The Prisoners found Guilty.]

Mr. Coke. I desire to know of your Lordship, whether the Nose can be said to be slit, within the meaning of the Statute, when the Edge of it was not cut through?

L. C. Justice. 'Tis true; the Edge of the Nose was not slit, but the Cut was athwart the Nose, which separated the Flesh of the Nose, and cut it

quite through into the Nostril. This I take to be a Slitting of the Nose; and the Surgeon swore it.

On *Wednesday* the 14th of *March*, the Prisoners were brought into Court to receive Sentence; when it being demanded what they had to say why Judgment of Death should not be pass'd upon them, *Coke* said,

Coke moves in Arrest of Judgment.

THIS was a very penal Statute, and consequently, by the known Rule, not to be carried beyond the express Letter of it. That no Crime, of what Nature or Magnitude soever, cou'd fall within the Purview of it, but such as was identically the same, in every Circumstance, with that describ'd by the Words of the Statute itself.

Vol. vi. p. 224.

That all the Circumstances describ'd by the Statute, must concur to constitute the Crime: And here the Intention to maim and disfigure was not prov'd. Nor was it an Objection to say, That the Crime which was prov'd by the Evidence, was much worse than that which was describ'd by the Statute; for if it was worse, it cou'd not be the same. That at Summer Assizes at *Dorchester*, Anno 1712. a Woman was indicted before Mr. Justice *Eyre*, for the Murder of another Woman; and upon the Evidence it appear'd, that the Person murder'd was her Mistress; which made the Crime Petty Treason; and the Judge directed this Matter to be found specially: And upon Conference with all the Judges it was held, she ought to be acquitted upon this Indictment, as she accordingly was; and afterwards indicted for Petty Treason, and convicted and executed thereupon.

And another Case or two were cited; but were not thought material by the Court.

Vol. vi. p. 226.

The Prisoners Objections over-ruled.

Vol. vi. p. 227.

L. C. Justice. I do agree with the Prisoner that this is a penal Law, and not to be extended by Equity. That he that is guilty within this Statute, must be guilty of all the Circumstances within it; and if any one of the Circumstances prescrib'd by the Statute be wanting, he is not Guilty: And therefore in all those Cases put by you, if any one of the Circumstances prescrib'd by the Statute be wanting in any one of them, such Case is out of the Statute: But whether all the Circumstances requir'd by the Statute did not concur in your Case,

was

was a Matter of Fact, which the Jury, who are the proper Judges, have tried, and on such Trial they have found them all to concur. You seem to argue upon a Supposition of this Fact to be otherwise than the Jury have found it: The Jury have found you guilty of all the Circumstances within the Statute: There was no Matter of Law in this Case, but Matter of Fact; whether on purpose, and of Malice forethought, and by lying in wait, the Nose of Mr. *Crispe* was not slit with Intention, in so doing, to maim or disfigure, and whether you were not feloniously present, aiding and abetting. The Jury had the whole Evidence before them: They consider'd of the whole Matter of the Preparation, and lying in wait to do the Fact; of the Fact itself; of the Means and Instrument made use of to do it; of the Manner of doing it; and of all the other Circumstances and Particulars relating to the Fact: And on the whole, after they had withdrawn, and consider'd amongst themselves for some Time, they have found you guilty within the Terms and Circumstances of the Statute. So that though all the Cases put by you should be very good Law; yet they do not any ways affect yours, because you are actually found guilty of the Crime itself. Have you therefore any Thing to say against the Indictment itself.

Coke. I hope I have one Glimpse more; from the King's Pardon, publish'd in the Gazette.

L. C. Justice. If you offer any Pardon by Act of Parliament, or under the Great-Seal, I must allow it; but if you mean only a Promise of Pardon in the Gazette, you must apply for this immediately to his Majesty.

Coke. I beg your Lordship will give me Time, that I be not hurried out of the World presently.

L. C. Justice. I shall consider of it, and give you a convenient Time. Mr. *Coke*, you ought seriously to reflect on your past Life: You cannot but own you have been a great Sinner; you have had Malice in your Heart against this Gentleman above three Years; you propos'd it to *Moone* three Years and an half ago, to knock Mr. *Crispe* on the Head.

Coke. I declare, as I shall answer it at the Great Day, I never spoke to *Moone* about any such Thing.

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L. C. Justice. Supposing that *Moone* hath said too much ; yet the Crimes you own, and cannot deny, are exceeding heinous. You own, that you invited your Brother to sup at your House on Purpose, that you might have an Opportunity of murdering him. This is such a Crime as shocks human Nature : The bare Mention of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. As to the Judgment of the Law, which is now to be pronounced upon you both, it is this :

The Sentence. *That you, and each of you, go from hence to the Place from whence you came ; and from thence to the Place of Execution, where you shall be severally hanged by the Neck till you be severally and respectively dead. And the Lord have Mercy on your Souls.*

The Execution. On Saturday the 31st of *March*, 1722. they were both executed at *Bury St. Edmund's*.

An ACCOUNT of the Behaviour, Confession, and Last Dying Words of ARUNDELL COKE Esq; and JOHN WOODBURN Labourer, who were executed at Bury St. Edmund's, in the County of Suffolk, on Saturday, March 31. 1722.

MR. *Coke* no sooner found himself under that Sentence his Crimes had so justly drawn upon him, he diligently apply'd himself to the obtaining a Pardon : To which End many Persons were employ'd to sollicite Mr. *Crispe* to a Reconciliation, which was thought the first Step necessary to be taken in the Affair. Mrs. *Coke* had divers Conferences with him, to engage him thereunto ; and, with all the Tears and Entreaties of a Sister, begged her Husband's Life upon the Terms of perpetual Banishment to the remotest Parts of the Earth, or any other whatsoever that could be thought sufficient to atone for so heinous a Crime, as believing something like this might be obtain'd, in case Mr. *Crispe* could be brought

brought to join in a Petition to his Majesty for that Purpose : But as Mr. *Crispe* was, on the one hand, press'd by the Importunities of the Friends and Relations of the Criminal, so, on the other hand, was he almost worn out by the Gentry, &c. of the Country, to contemn and reject their Proposals ; and at length, being resolv'd to hear no more Supplications, of what Nature soever, that came from the Gaol, Mr. *Coke*, after one or two ineffectual Letters to him, began to turn his Thoughts another Way, and to think of other Methods.

A Gentleman was dispatched to *London*, with Bank-Bills of 400*l.* not only to defray his Journey, but to answer other Expences incident to his Commission. During the Sollicitations of this Person in Town, Mr. *Coke* was visited by several Clergymen in the Country, who endeavoured to bring him to a due Sense of his sad Condition : Publick Prayers were put up for him in *Bury*, as well as in two or three Churches in *London* ; but he continued to entertain strong Hopes of a Reprieve, till his Agent, who depended upon the Interest of a certain great Dutches, had wrote him an Account, that his Offence appeared so detestable in the Eyes of the People above, that he was altogether unable to prevail for a Respite of ten Days only.

He was now altogether confused and dejected ; but as Death began to make its nearer Approaches, he began to make due Preparations for his Dissolution ; and having desired an Interview with his Accomplice *Woodburne*, (who was confined in another Apartment,) earnestly asked his Forgiveness, for engaging him in so horrid an Enterprize to his utter Destruction ; but *Woodburne*, even to the Day of the Execution, would not be brought to say he forgave him, but said he died in Charity with all the World besides. The Execution was impatiently expected by all Ranks and Degrees of People ; previous to which Mr. *Coke* wrote the following Letter to the under Sheriff.

Most Worshy Sir,

“ THE Manner of the Execution, of the Sentence of Death passed on me, is entirely at your Discretion ; and having just Cause to apprehend

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“hend, that Insults peculiar to the rude and barbarous Disposition of the Multitude may be then offered to me, it is my earnest and dying Request, that you order the Execution to be done as early on Saturday Morning as possible, the like Favour having been granted some few Years since to a foreign Gentleman at *London*; and as this will tend rather to preserve, than disturb the Peace of the Country, I have great Reason to hope, from your Christian Disposition, that this poor Boon will be complied with,

Your most Miserable,

Wednesday,
9 at Night.

And Dejected Servant,

A. COKE.

The Sheriff having intimated to Mr. *Coke*, that he designed to comply with his Request, and had appointed his Execution alone by Six in the Morning, on Friday he took his Leave of his Wife, &c. in the most solemn Manner; and about Seven at Night received the Holy Communion from the Hands of the Reverend Mr. *Barton*, a neighbouring Clergyman, expressing the greatest Sorrow for his Offence, which, he said, had rendered him the most odious and contemptible Creature living. To prevent the Noise and Clamour which an extraordinary Concourse of People might occasion, and which Mr. *Coke* apprehended, as appeared by his Letter, it was very industriously given out, the Execution was to be at the usual Hour; but to the great Disappointment of the People in the adjacent Villages, Mr. *Coke* was convey'd from the Gaol between Six and Seven in the Morning to the Place of Execution, in a Mourning Coach, accompanied by the Reverend Mr. *Barton*, and two of his own Relations, dressed in a Mourning Suit, the same he wore at his Trial. He discovered very great Sign of Sorrow and Contrition, and entreated the Spectators, which were pretty numerous, to pray for his departing Soul. Mr. *Barton* pressed him very earnestly to declare, whether he was not concerned in poisoning Mr. *Crispe's* Children. To which he would not make any direct Answer; but only said, he was under such Disorder and Pressure of Mind, as he could not

not remember any Thing of those Matters. He was soon after turned off, using some pious Ejaculations, the People expressing a general Satisfaction at his Death. His Body was carried away in a Hearse, which waited at the Tree; and was privately interred the same Evening, about four Miles from *Bury*.

Woodburne was very much regretted, in regard his Ignorance and Poverty were supposed to be the Means which drew him into his wretched Master's Purposes, and of which the other no doubt took Advantage to engage him. There was generally a large Concourse of People at the Gaol to visit him, which occasioned him to drink much; Notwithstanding which, when he found all Hopes of Life vanished, he applied himself very seriously to fit himself for another State, seeming to have a just Sense and Sorrow of his Crimes, and spent his Nights, as well as Days, in Prayers and Tears, earnestly asking Pardon of God for his wicked Life, publicly confessing that he was ever addicted to pilfering, and other scandalous Practices. *Mr. Coke*, who kept himself more retired, sent to desire to speak with him when he was going to Execution; but he would not see him. About One o'Clock the same Day he was carried to the Place of Execution with a Felon; where the Reverend *Mr. Dent* attended him, and desired him to confess his Knowledge, if he had any, of poisoning *Mr. Crispe's* two Children: He very frankly acknowledged, that once, by *Mr. Coke's* Directions, he gave the said Children two Sugar-Plumbs, who died soon after; but could not take upon him to say those Plumbs were poisonous. He wept bitterly at the Place of Execution; and desired the Standers-by to take Warning by his sad Example; and having repeated the Apostle's Creed, and sung some Penitential Psalms, he was turned off with the other Malefactor, the People crying out, *The Lord have Mercy on their Souls*. His Corpse was interred the next Night on the Outside of the Church-Yard Wall.

A True COPY of a Paper delivered by Mr. Coke to a Friend the Night before his Execution.

I Know, as my unhappy Case is become the Subject of all Conversation, especially in this Part of the

The Trial of Woodburne and Coke, &c.

the Kingdom, the World will expect I should say something as a Gentleman, as well as a Criminal; though my Birth and Education are too well known to need any Mention; and I once as little thought they would ever have come upon the publick Stage in this Manner.

In the first Place, I heartily beg Pardon of Mr. *Crispe* for the great Injuries I have done, and the far greater I intended to do him. If he had contributed toward saving my Life, he should not have found me unworthy of deserving it; but as my miserable Fate is the Result of Heaven and Earth, I willingly submit thereto.

My Trial was before a Judge, the most sage and learned in the Universe, and my Jurors were Men of Honour and Probity; wherefore I have no Reason to fix a Complaint on that Side: But I have been fond enough to believe, that if my Council had been allow'd to argue those Points of Law I so much insisted on, I had not been in these Circumstances. And I now must return my Thanks to Mr. *Harvey* and to Mr. *Price*, who were ready to assist me herein; and I may venture to say, the fatal Step I took in endeavouring to render myself entitled to the Benefit of his Majesty's Pardon, was one of the chief Causes of my Conviction.

As myself, and the unhappy Wretch who suffers with me, are the first who fall by this very penal Act, so I pray God we may be the last.

The Stories spread so industriously of my employing *Woodburne* to poison Mr. *Durrant's* Horse, Mr. *Salisbury's* Swine, &c. are the natural Prejudices the World too readily entertains of People under my unhappy Circumstance: As for any of those Matters, I here declare myself as innocent, as it is possible for a Man to be; and if *Woodburne* is otherwise, it will be his Duty to discover the Truth.

The Confusion I am under, obliges me to conclude myself,

Your Unhappy Friend,

A. C.

The TRIAL of CHRISTOPHER
LAYER Esq; at the King's-Bench
for High-Treason, Nov. 21. 1722.
Mich. 9 Geo. I.

ON the 31st of October, 1722. *Christopher Layer* Vol. vi. p. 229.
Esq; was brought up to the Court of *King's-Bench* by *Habeas Corpus*, directed to the Lieutenant of the *Tower of London*, to be arraigned on an Indictment of High Treason found by the Grand Jury for the County of *Essex*, on a special Commission of *Oyer and Terminer*. *Christopher Layer* arraigned for High Treason.

The Return of the *Habeas Corpus* being filed on the Motion of Mr. Serjeant *Pengelly*, the Prisoner was arraigned, and the Indictment read; which sets forth,

I. THAT *Christopher Layer*, late of the Parish of *St. Andrew's, Holborn*, in the County of *Middlesex*, Esq; being a Subject of his Majesty King *George*, not having the Fear of God in his Heart, but moved and seduced by the Instigation of the Devil, as a false Traitor, &c. intending the Government of this Kingdom to subvert, and his said Lord the King to depose, and bring to Death and final Destruction, and to exalt the Person styling and pretending himself to be King of *England*, by the Name of *James III.* to the Crown of this Realm, the 25th Day of *August*, in the 9th Year of the Reign of the King that now is, and, at divers other Days and Times, as well before as after, at *Laytonstone* in the said County of *Essex*, did traiterously compass and imagine the deposing the said King, and bringing him to Death and final Destruction. The Indictment.

II. And to accomplish, and bring about the said Treasons, did, with divers other false Traitors to the Jurors unknown, on the said 25th of *August*, and, at divers other Times, before and since,
at

at *Laytonstone* aforesaid, traiterously meet, propose, consult, conspire, and agree to raise an Insurrection and Rebellion within this Realm for the Purposes aforesaid.

III. And for the more effectual compleating and perfecting the said Treason, at the Time and Place aforesaid, did traiterously publish a seditious Writing, purporting an Exhortation, Incitement, and Promises of Rewards to his Majesty's Subjects, to levy War against the said King for the Purposes aforesaid.

IV. And for the more effectual compleating and perfecting the said Treason, did, at the Time and Place aforesaid, traiterously consult, conspire, and agree, with an armed Force, the said Pretender to exalt and bring to the Crown of this Kingdom.

V. And for the more effectual compleating and perfecting the said Treason, at the Time and Place aforesaid, did traiterously raise and retain several Men, to the Jurors unknown, to take up Arms, and levy War against the said King, for the Purposes aforesaid.

VI. And for the more effectual compleating and perfecting the said Treason, at the Time and Place aforesaid, with other false Traitors, to the Jurors unknown, did traiterously consult, conspire, and agree to seize and imprison the sacred Person of the said King, for the Purposes aforesaid, against the Duty of his Allegiance, the King's Peace, and the Statute in that Case made and provided.

Vol. vi. p. 230.
The Prisoner
complains of
hard Usage.

Prisoner. My Lord, I am brought here in Fetters and in Chains; I have been us'd more like an *Algerine* Captive, than a free-born *Englishman*: I have been dragg'd through the Streets by the Hands of Gaolers; and have been made a Shew, and a Spectacle of. I am now in a Court of Justice before your Lordship; and, I hope, the Time will come, when I shall have a candid and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Necessity of the Times. I had not said this, but I have been insulted since I came into the Hall. A Gentleman came, and told me, *either you must die, or the Plot must die.* My Lord,
this

this is Usage insufferable in a Christian Nation; and, I think, I can lay my Hand upon my Heart, and say, I have done nothing against my Conscience.

Serj. Pengelly. If Mr. Laver hath any Objections to the Indictment, he may make them; but should not go on in this Manner.

Prisoner. My Lord, I hope, I shall have these Chains taken off, that I may have the free Use of my Reason; and then, that I shall have a fair and tender Trial.

He moves to have his Irons taken off.

L. C. Justice. There have been a great many Things said by you which we cannot examine into: You have given a general Charge of some People using you ill: Your Expressions are not just and right; you charge no particular Person; we can take no Notice of them. As to your Chains, that must be left to those to whom the Custody of you is committed by Law. When you come to your Trial, your Chains may be taken off. Consider the Matter of this Day: If you have any Objections to the Indictment, the Court will hear them; if not, you must plead.

Lord Chief Justice Pratt.

Att. Gen. I am sure nothing is intended, but that he should have a fair Trial: But to complain here of hard Usage, of Chains, and Imprisonment, carries with it a Reflection of Cruelty. The Prisoner hath been kept, as every Body in his Circumstances are, when they have been attempting to make an Escape. As to any other Matters of Hardship, I don't believe it, but that he hath had as much Freedom and Liberty as is proper and usual. As to the Man who insulted him in the Hall, I know nothing of it; but, can't but observe, that it is an easy Matter for People to contrive such a Thing in concert together: It might be somebody set on by himself that did it.

Sir Robert Raymond Attorney-General.

L. C. Justice. Alas! If there hath been an Attempt to escape, there can be no Pretence to complain of Hardship. What does the Gentleman-Gaoler say?

Gent. Gaoler. He never attempted to escape, since he was in my Custody.

Att. Gen. No; it was before.

Soll. Gen. This Complaint is made only to captivate the By-standers; and tho' it is aggravated in this solemn Manner, amounts to no more than this,

Wearg Solicitor-General.

this, That a Prisoner, who stands charg'd with High-Treason, is brought up hither under a Guard, and in Fetters, as Persons in that Condition usually are. It is very well known, that when this Gentleman was in the Custody of a Messenger, he not only made an Attempt to escape, but actually escaped; got out of a Window two Pair of Stairs high, and from thence over the Water into *Southwark*; and since that is so, can there be any Colour to say, that what was done afterwards was unwarrantable. It does not become a Person in the Prisoner's Circumstances to aggravate and misrepresent the Usage he has received. I say thus much, because I would not have it gone away with, that there has been any Hardship put upon the Prisoner contrary to Law. No; his Majesty, who makes the Laws of the Land the Rule and Measure of all his Actions, though he will have Justice done to himself and his Government, against any Person that shall conspire to overthrow it; yet he will suffer no Hardships to be done even to such Persons contrary to Law.

Vol. vi. p. 231.
His Council
moves to have
his Irons taken
off.

Mr. *Hungerford*. My Lord, that he is in Chains now is demonstrable; and he hath told me in the *Tower*, that they are so grievous to him, that he cannot sleep but in one Posture, and the Gentleman Gaoler now helps to hold up his Chains; otherwise the Prisoner could not stand. And, I believe, I might challenge them to give an Instance where any Prisoner was shackled with Irons in the *Tower* before Mr. *Layer*. His Majesty's Prisoners of the *Tower* are such Strangers to this Usage, that they had not the very Materials there: They were sent for from *Newgate*; and I hope they will be carried back again thither. And I humbly insist upon it, that by Law he ought not to be called upon, even to plead, till his Fetters are off. My Lord *Coke* is clearly of that Opinion. The only Reason assigned for putting of Irons at all upon a Prisoner is, to keep him in safe Custody. The Laws of *England* allow of no Tortures; and the Reason why they are taken off in the Course of Proceedings against him in a Course of Justice, seems to be, that his Mind should not be disturb'd by any Uneasiness his Body or Limbs should be under. And as to the Distinction, that his Chains should be on when he pleads, because but for a Moment, and off when he is try'd, because that

that will be of longer Duration; it is possible what we have now to say may be as long as some Trials; I should think too, that something of the Dignity of the Court, where the King is suppos'd to be personally present, might be consider'd. To have a Man plead here for his Life in Chains, seems to be very unsuitable. As to the safe Custody intended by the Irons, is he not here too well guarded to escape?

Mr. Kettlebey. At the Trial of *Cranburne*, when he was brought up here before my Lord Chief Justice *Holt*, he insisted that his Chains should be taken off before he pleaded, and it was order'd. This was likewise mention'd in the Trials of *Dorrel*, *Gordon*, and *Ker*; and the Court declar'd, If the Prisoners insisted on it, it ought to be done. In the tenth Folio of *Kelynge*, it is expressly declar'd, on a Consultation of all the Judges in *England*, that a Prisoner ought to have his Irons taken off before he pleads.

Mr. Kettlebey, his
other Counsel.

L. C. Justice. The Case of *Cranburne* was different: He was call'd upon to plead, and try'd at the same Time; and no doubt of it, he is not to be in Chains at his Trial. But here he is only call'd upon to plead by Advice of his Counsel, and is not to be try'd now; and why should his Chains be taken off this Minute, and put on the next: And though it hath been said, he is too well guarded, I don't think a Man charg'd with High-Treason of this Nature can be too well guarded, especially if he hath endeavour'd to make his Escape; that will justify more than the Law allows in other Cases.

Mr. *Hungerford*. My Lord, what I mean by saying too well-guarded, I mean sufficiently guarded.

L. C. Justice. Have you any Thing more to offer? This is nothing but to captivate the People.

Mr. *Hungerford*. My Lord, we humbly hope, that the better to prepare himself for his Trial, he might continue without his Chains till after that Time.

L. C. Justice. I am of another Opinion. If we should order his Chains off, and he escapes, we may be guilty of his Escape; therefore to make Objections in Matters of this Nature, is to cast a Reflection on the Court, for not doing that which is not in their Power to do.

Mr.

They move to
quash the Indict-
ment.

Vol. vi. p. 232.

Mr. *Hungerford*. My Lord, I am of Counsel with the Prisoner: I have here in my Hand the whole Record deliver'd to him; in which not only the Indictment is set forth, but the Commission of Oyer and Terminer. After the Commission hath enumerated the Names of the Commissioners, it goes on, and says what are the Offences that they are authoriz'd to enquire of, as High-Treason, Misprision of Treason, and other Offences of a lesser Degree. Then it goes on, and says what the Persons shall be concerning whom this Enquiry shall be made; *Et per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articulis & Circumstantiis, præmissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque concernen' plenius veritat'*. My Lord, I have consider'd the Words with all the Accuracy I can, and have endeavour'd to render them into *English*; but cannot. I must say, I look upon these Words, as plac'd in the Record, to be Nonsense, and not capable of being render'd into *English*; for they import no Meaning at all: It is a Blemish in the Commission itself; and if so, the Enquiry taken by Virtue of that Commission must fall to nothing; and consequently, this Indictment must be nought. My Lord *Coke*, for the sake of Posterity, I suppose, hath given us the Form of the Commission of Oyer and Terminer in his Time; and there these Words are entirely left out: They seem to be Words of no Signification; therefore we hope there shall be no further Proceedings till this is set right, and that the Indictment shall be quash'd.

Mr. *Kettlebey*. My Lord, there are other Objections: Is it your Pleasure we should go on this first, or mention them all together?

L. C. Justice. Make all your Objections together.

They object a
Misdomer.

Vol. vi. p. 233.

Mr. *Hungerford*. My Lord, the first Thing that occurs to me, in the Indictment itself, is, that this Gentleman's Christian Name is wrong spelt, being there call'd *Christopherus Layer*, with an *e*; whereas it should be *Christophorus*, with an *o*.

Mr. *Kettlebey*. My Lord, I have here in Court several of the best Dictionaries and Lexicons, which shew the true Word to be *Christophorus*; and I believe the Gentlemen on the other Side can't produce

one

one Instance in any authentick Book, *Greek* or *Latin*, where it is not always spelt with an *o*.

L. C. Justice. How do we know what his Name is? You must plead it in Abatement: He might be christen'd *Christophorus*, for ought we know.

M. Kettlebey. My Lord, for false Spelling —

L. C. Justice. How doth that appear to us? You are wrong in making your Objection at this Time; I would not prevent your offering any Thing that is material for your Client; but if I can satisfy you that you are improper in Form, it may save the Time of the Court.

Mr. Kettlebey. I hope your Lordship will pardon me: Here is the Life of a Man concern'd; and as I would not willingly offer any Thing that in the like Cases hath been over-rul'd, so neither would I omit any Thing that may be material for the Prisoner, whose Defence the Court hath entrusted us with; therefore I will go on to the other Objections, Objections, that the Indictment is false Latin. that we think to be improper *Latin*; *Compassavit*, *imaginatus fuit* & *intendebat*: These are the Words. I don't know whether this *Latin* will go down in *Westminster-Hall*, but I'm satisfied it would not in *Westminster School*.

Here is the *Et intendebat*; *Et*, a Conjunction Copulative between Verbs in several Tenses. Here is *Compassavit*, the Preterperfect Tense; *Imaginatus fuit*, the Preterperfect Tense; and *Intendebat*, the Preterimperfect Tense. Why should not the last Verb be put in the Preterperfect Tense, according to the Rules of Classical *Latin*, as well as the two former.

There is another Word in the Indictment, namely, that of *Seisind'*. That the Prisoner *conspiravit ad sacram personam Domini Regis capiend'*, *seisind'*, & *imprisonand'*. By the Words coupled with it, I suppose *Seisind'* is intended to mean the taking or laying violent Hands upon his Majesty's Person; but sure there never was such a Word in any Indictment before, or to be found in any Author whatever: It is neither Classical *Latin*, or Law *Latin*; but a mere fictitious Word, coin'd for this very Purpose, without any Precedent to warrant it. My Lord Coke, in his first Institutes, p. 17. says, That the Word *Seisitus* comes of the French Word *Seisin*; and that in Common Law 'tis properly applied to Freehold,

hold, in Contradistinction to *Possessionatus*, which relates to Chattels; for *Seisitus* and *Possessionatus* are mention'd as Terms of Arts, technical Words in the Law, that by long Use have acquir'd to themselves one peculiar and determin'd Signification; for which Reason I don't object against the Word *Compassavit* in this Indictment, it having been always used in Indictments of High-Treason to express compassing the Death of the King: But where did they meet with the Word *Seisend'*? And they would fancy it to be a Gerund of some unknown active Verb. How came they to give it this Sense, to make it signify the same as *Capiend'*? I apprehend the very Gift of the Indictment, at least so much of it as relates to this Overt-Act, entirely depends upon this Word *Seisend'*; and if this appears to be insignificant, barbarous, false, or improper *Latin*, I hope it is sufficient to overthrow the whole Indictment.

L. C. Justice. Read that Part of the Indictment.

Clerk of the Court reads, *Quod tu Christopherus Layer, &c. ad capiend', seisend', & imprisonand', &c.*

L. C. Justice. *Ad capiend' & imprisonand'.* Won't these Words do; suppose the other Word *ad seisend'* insignificant?

The King's Counsel answer the Objections.
Vol. vi. p. 234.

Serj. Pengelly. My Lord, these Objections have been made with so much Ceremony, and usher'd in with such Pomp, as if something else was meant than quashing this Indictment. The Objections to the Commission we apprehend improper: It is not in the Power of the Court to quash the Commission; and therefore to mention misspelling, and of false and improper *Latin* therein, signifies nothing; but upon reading it, we think this Objection will quite vanish. These Words are used in all Commissions of like Nature, and are inserted in the very Form of the Commission; and the Caption of the Indictment, publish'd in the Treatise, allow'd by all the Judges of *England*, call'd a Collection of Statutes, relating to High-Treason, composed for the Assistance of the Justices in *Scotland*: And because of the supposed Difficulty of these Words, I will for the sake of the Gentlemen on the other Side, read them in the Order they are to be construed, thus: *Ad inquirend' plenius veritatem per sacrum probos*

bos' & legal' hom', &c. de quibuscunque prodicionibus Misprisionibus, &c. per quoscunque & qualitercunque; Hic' Fact', &c. Ac de aliis Articulis, &c. & ad eadem prodicion' & al' premisi' audiend' & terminand'.

Here they are to enquire more fully the Truth of, and concerning all Treasons, Misprisions of Treason, by any Person whomsoever committed, &c. And if the Words *Plenius Veritat'* had immediately follow'd the Word *Inquirend'*, every Body at first Reading must be satisfied, that no Objection could be made thereto; and the Objection now is only made on Account of the placing these Words at the End of the Sentence; but it makes no Difference in the Construction or Sense. How otherwise can it be construed or understood, but to enquire more fully of the Truth of those Offences there enumerated, and what Persons are guilty? &c. And therefore I take it, that the Form of the Commission is proper, and will be justified, not only by the Sense of it, but by the usual and common Course of Proceeding. As to the next Objection, the spelling *Christophorus* with an *e*; if there be any Difference in the Name, it must be pleaded in Abatement, if they would take the Advantage of it. As to the Objection, that the three Verbs which charge the High-Treason, *viz. Compassavit, Imaginatus fuit, & Intendebat*; that they are not in the same Tenses, there is no Necessity; the last Verb should be of the same Tense with those that go before the Copulative (*Et*) in the strictest *Latin*: Though *Compassavit* & *Imaginatus fuit* be in the Preterperfect Tense, yet *Intendebat* may be well added in the Preterimperfect Tense; and that will make no Difference, they being all three alledg'd, and found in the Time past, before the Indictment exhibited.

My Lord, as to the next Objection, that there is no such Word as *Seisend'*, I think the Word is proper and significant; and were it otherwise, as it is not made use of in alledging the Treason itself, but the Overt-Act or Evidence of the Treason, it will not vitiate that Part of the Indictment; for if any one of these Words alledg'd is prov'd upon the Trial, the Prisoner ought to be found guilty. Whether he compass'd to take the Person of the King, or to seize his Majesty, or to imprison and detain him; any of these Attempts, if prov'd, is sufficient, and

the Prisoner ought to be convicted. But the Words *Seisire & ad Seisend'* are Terms known in Law, and frequently used in Actions of Trespafs. We think the Word *ad Seisend'* is a proper Expression in this Case, to signify the Attempt or Design to seize and apprehend the Person of his Majesty; and we hope there is nothing in these Objections.

Vol. vi. P. 235.

Att. Gen. Your Lordship may please to observe, that immediately after these Words, *Plenus veritatem* in the Commission, there is a Comma, and none before: The whole Sentence before is entire; and therefore in Construction the Words *Plenus veritatem*, refer to the Words *Ad inquirendum* at the Beginning of the Sentence. In our legal Proceedings, indeed, we are seldom so nice to confine ourselves to the *Latin* of the Classics; but this is very proper *Latin*; and the disjoining of the Words *Plenus veritatem* from the Words *Ad inquirendum*, by which they are govern'd by the Interposition of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in Point of Construction must refer to others at the Beginning.

As to the Objection, that the Word *Seisend'* is not known in our Law; if that was true, it would not quash the Indictment, because there are several other Words to the same Effect; but we insist, that this is a very proper Word. In the *Exchequer*, the Word used in Case of Seizures, is *Seisavit*, Write issue, commanding the Sheriff *Seisire* such Lands, &c. into the King's Hands, and the Sheriff returns *Seiziri feci*. It is a Law Word therefore, which is here applied to the Person of our Sovereign; and as it is in the Proceedings before mentioned applied to seizing Lands, &c. why may it not be applied to the seizing of a Person? And then if *Seisire* be proper, the Gerund from that must be *Seisendum*; and therefore we apprehend there is no Colour for this Objection.

The Prisoner's
Council reply.

Mr. Hungerford. I beg a few Words by Way of Reply: As to the first Objection, against the Words *Plenus veritat'*, as Words of no Sense or Meaning, where they are plac'd in the Indictment, we hope it is not yet answer'd. *Mr. Attorney* hath endeavour'd to make them Sense, by transposing them, and in-

serting

serting *Plenius veritat*' ten Lines before they are in the Indictment; but if they are not Grammar, or intelligible, there the Objection still holds. I know not what Liberty the King's Counsel hath to transpose Words; and though it be said, the Judges have settled the Form of Proceeding in Cases of High Treason by the Direction of the House of Lords, and this *Plenius veritat*' is got into the Form inserted in that Treatise, that Book, notwithstanding the solemn Allowance of it by the Judges, is not a conclusive Authority. It was denied to be so in the Case of *Matthews*; where an Objection was taken to the Pannel of the Jury, because the Addition and Places of Abode of the Jurymen were not inserted according to the Directions of that Book. My Lord Chief Justice *King*, who presided at that Trial, assisted by all the Judges, except your Lordship, overrul'd that Exception; and therefore if we have no other Authority to combat with but that Book, we hope this Objection shall stand. Vol. vi. p. 256

As to the Words *Compassavit imaginatus fuit & intendebat*, there is something in that Objection too; for they are in different Tenses or Times, and there is the Conjunction Copulative between them, as if both Tenses implied the same Times, which it is certain they do not; and therefore they charge nought; for a Thing cannot be done lately, and formerly, and both at the same Time.

Mr. *Kettlebey*. My Lord, I believe four Parts in five of the Caption interfere between the *Inquirendum* and the *Plenius veritatem*; a whole Catalogue of Offences, several independent Sentences, different Times, Persons, Places, Things, all station'd between them; and yet these Words are to be united. I would be glad to know by what Rule of Grammar this can be done?

As to the Word *Seisfiend*', they don't shew one Instance where it has been used. Indeed they mention a Precept to the Sheriff, where are found the Words *Seisfiri facias* and *Seisfiri feci*, which are justified by Usage. Besides, *Seisfiri* is there used in the very same Sense which the Law hath impos'd upon it: It is to be put into Possession; the Lands are so deliver'd by the Sheriff into the Hands of the King, that he becomes seiz'd thereof *ut de Fedo* & *in jure Corone*; but if ever that Word was put into

The Trial of Christopher Layer Esq;

any Indictment to signify to seize and imprison the King, is entirely unknown to me.

Indeed, here is one Piece of Doctrine offer'd, which if it holds good, puts an End to all our Objections, and even the Act of Parliament on which they are founded, namely, that if any one Overt-Act is sufficiently express'd by any one Word, though there be Words that are improper, and false *Latin*, yet they will not vitiate the Indictment. What avails then this Act, that impowers us to make Objections to Miswriting, Misspelling, false and improper *Latin*? It is not to be suppos'd, that whoever hath the drawing of an Indictment, should make Faults, and blunder on from first to last. I believe Mr. Attorney won't shew any Instance where one Overt-Act in an Indictment was set aside, and the rest of the Indictment held good. Exceptions have ever since the making of this Act been taken and argued by Counsel, and determin'd; but if this be a sufficient Answer, surely they spent the Time of the Court to very little Purpose, in debating whether there were any Faults in the Indictment, when it was so easy to shew it was not faulty throughout.

Mr. *Hungerford*. My Lord, I beg leave to hand up this Precedent of my Lord *Coke's*, where the Words *Plenus veritat*' in the Commission are entirely left out.

Lord Chief Justice over-rules their Objections.

L. C. Justice. What is the Use you would make of an extrajudicial Opinion of my Lord *Coke's* against the Opinion of all the Judges? Neither is concluding; but certainly the Opinion of all the Judges of later Times must have more Weight, than the extrajudicial Opinion of a single Judge at any former Time. We have been told of Classical *Latin*, and *Ciceronian Latin*; and if there be any Regard to be had to that, is any Thing more common in every Part of *Cicero*, than to put Words last, that in Construction must come first. Indeed it is not material where they stand; they must be taken in that Manner of Construction as would make them significant, that is, by taking the last Words *Plenus veritatem* to go first in Construction, and then it is very proper and just.

Vol. vi. p. 237.

As to the Objection, that *Compassavit & Imaginatus fuit* are in the Preterperfect Tense, and *Intendebat*

debat in the Preterimperfect Tense, suppose it had been *Compaffavit* only, or *Imaginatus fuit* only, or *Intendebat* only, would not either of these Words, whether in the Preterperfect or Preterimperfect Tense, have been sufficient to have charg'd Mr. *Laver* with having some Time before compassed and imagined the Death of the King; and as here are several Overt-Acts of compassing and imagining the Death of the King laid to some, of which no Objection is made, any of these are sufficient to maintain the Treason. One of the Overt-Acts is, That he did design, consult, and agree *ad capiend' seifend' & imprisonand'* the Person of the King. Suppose it had been *capiend' & imprisonand'*, then you say it had been well enough; but the putting in this Word *seifend'* will vitiate the Whole, because it is an improper and vitious Word. I dare not say in a Court of Law, that it is an improper and vitious Word: You are told of a Court of Law where the Word is used, and hath the same Signification as in the Indictment, as to seize Lands into the Hands of the King. To seize Lands, or to seize the King's Person, the Word is the same; and if *seifire* is well enough to signify to seize Lands, *seifire* is enough to signify to seize the King's Person; therefore I think it a proper Word. But whether it is, or not, there is sufficient in the Indictment to maintain the Charge against Mr. *Laver*; for he is charg'd with a Consultation and Agreement to imprison, and detain the King in Prison. These are sufficient, without the Word *Seifend'*; but the Word *Seifend'* hath been used in our Law Proceedings, and never objected to; and if we should say it would not signify a Seifing, we must set aside half the Proceedings in the Court of *Exchequer*. In my Apprehension, therefore, these Objections can be of no Service to your Client; they signify nothing.

Mr. Justice *Powis*,
Mr. Justice *Eyre*,
Mr. Justice *Fortescue-Aland*,

} I am of the same
Opinion.

The rest of the
Judges deliver
their Opinions.

L. C. Justice. The Objections being over-ruled, demand of him what he hath to plead.

Clerk of the Court. *Christopher Layer*, hold up your Hand. How say you, *Christopher Layer*? are
E c 3 you

The Trial of Christopher Layer Esq;

you Guilty of the High Treason whereof you stand indicted, or Not Guilty?

Prisoner. I desire my Plea of *Misnomer* may be received; and I plead *Not Guilty*, as to the Fact.

[Clerk of the Court reads the Plea.]

A Plea of Mis-
nomer.

ET Christophorus Layer ad barram hic duct' in propria persona suavenit, & habito auditu Indictament' predict' dicit quod ipse est persona in Indictament' predict' mentionat' & intens' per nomen Christophori Layer, nuper de Paroch' St. Andrea Holborne in Com' Midd', Ar'; & versus quem, Indictament' predict' prolat' existit pro al' prodictione predict' Et dicit quod ipse ad Indictament' illud respondere compelli non debet, quia dic. quod ipse diu ante tempus Caption' Indictament' predict' necnon ante tempus offensi in Indictament' ill' specificat' & fieri supposit' baptizatus fuit per nomen Christophori, & per id' nomen Christophori, semper a tempore Baptization' suo hucusque vocat' nuncupat' & cognit' fuit; & hoc parat' est verificare unde ex quo ipse non nominatur in Indictament' predict' per nomen Christophori petit judicium de Indictament' illo, & si ipse ad Indictament' predict' ulterius respondere compelli debeat, &c. Et quoad prodiction' in Indictament' predict' mentionat' ipse predict'. Christophorus Layer dicit quod ipse in nullo est inde culpabilis, & inde de bono & malo panit se super patriam, &c.

J. Hungerford,
Abel Kettelbey.

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L. J. Justice. Your Plea is received: He hath pleaded in Abatement first, and then pleads over to the Treason. What say you to it?

Serj. Pengelly. We ought to have Time to draw up a Replication: We therefore pray he may be brought up again on Saturday.

Mr. Hungerford. I have some doubt if it can be by Rule, or must be by *Habeas Corpus*.

L. J. Justice. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He must be taken back, and brought here on Saturday next.

[Dis]

[Die Sabbati 3 die Novembris, 1722.]

The Prisoner was this Day brought to the Bar by the Lieutenant of the Tower.

Att. Gen. My Lord, I have demurred to the Prisoner's Plea in Abatement, and pray the Demurrer may be read.

[Clerk of the Court reads]

ET Robertus Raymond Mil' Attorn' Domini Regis The Plea demur-
 Generalis, qui pro eodem Dom' Rege in hac parte red to,
 sequitur habito audit' placiti præd' in cassation' Indi-
 ctament' prædict' superius placitat' pro eod' Dom'
 Rege dicit quod idem placit' materiaque in eod' content'
 minus sufficien' in lege exist' ad ipsum Crisopherum
 a respondend' ad Indictament' ill' excusand' ad quod
 quidem placit' idem Attorn' General' necesse non ha-
 bet, nec per legem terræ tenetur aliquo modo respon-
 dere. Et hoc idem Attorn' General' pro eodem Dom'
 Rege parat' est verificare prout Cur' &c. Unde pro
 insufficiens' placit' ill' idem Attorn' Dom' Regis Gene-
 ral' pro eodem Dom' Rege petit Judic' & quod Indicta-
 ment' prædict' bon' & sufficien' adjudicatur, &c.

Rob. Raymond.

Att. Gen. We pray they may join in Demurrer immediately.

Mr. Hungerford. My Lord, it is a Surprize to The Prisoner's
 us; and as the Clerk has read it, it is impossible for Counsel desire
 us to take the Substance of this Demurrer: We Time to join in
 therefore hope we shall be allow'd two or three Demurset.
 Days to consider this Matter of joining in Demur-
 rer. *Fitz-Harris* had Five: Two or three Days is
 but a little Time, especially when the Life of a Man
 is concerned. Mr. Attorney took from *Wednesday*
 to *Saturday* to consider of our Plea.

Mr. Kettlebey. My Lord, as I take it, the con-
 stant Practice is, That a Four-Days Rule is always
 given to join in Demurrer on the Crown-Side, as
 well as the Plea-Side; but if we are not regular in
 insisting upon four-Days, we hope at least your
 Lordship will indulge us with some Time; or if
 we do immediately join in Demurrer, that we shall
 have some Time to prepare ourselves to argue it.

E c 4

L. C.

L. C. Justice. How is the Course of the Court Mr. Harcourt?

Mr. Harcourt. My Lord, in criminal Prosecutions for Misdemeanors, two Four-Days Rule to plead are given, and a peremptory Rule moved for; and then, if there be a Demurrer, one Four-Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in Capital Cases there is no Rule given either to plead, or join in Demurrer; all Proceedings in such Cases being at Bar, the Prisoner is obliged to answer immediately.

L. C. Justice. The Course of the Court is against you.

Mr. Hungerford. Surely, if in a Criminal Case, which is not capital, a Man is indulged four Days, in such a Case as this is, which touches a Man's Life, his Posterity, and Estate, the Indulgence ought to be more than four Days.

Mr. Kettlebey. We don't insist upon this for Delay: We have pleaded over to the Treason; and in case we should join in Demurrer, whatever Time is taken up in arguing, it cannot obstruct the Proceedings in order to the Trial.

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Serj. Pengelley. My Lord, what he prays, is against the Rules of the Court. They have put in a Plea in Abatement; we have demurred to their Plea: If it be not good, can they amend their Plea in Abatement? What then can they do but join in a Demurrer? Is it adviseable to leave a Plea in Abatement to the Whole undetermined, and to try the Issue first? In all Capital Cases, as well as in Criminal, the Plea in Abatement goes to the Whole, to destroy the whole Indictment, and ought to be determined before the Trial. They can do nothing else but join in Demurrer; and therefore we hope they shall join immediately.

Att. Gen. As to what has been said about our having Time from Wednesday to Saturday, the Reason was, because Thursday and Friday were no *Westminster-Hall Days*; for which Reason we could not have the Prisoner brought up here before this Day. The putting in of a Demurrer to this Plea can be no Surprise to the Counsel for the Prisoner; for Yesterday we sent Copies of our Demurrer to them. In *Fitz-Harris's Case*, the Time asked, was not to join in Demurrer, but for settling his Plea in a Case

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a Case of great Difficulty ; and as soon as *Fitz-Harris* had pleaded, and the Attorney-General had demurred to it, the Court ordered the Prisoner to join in Demurrer immediately.

Mr. Hungerford. My Lord, I beg Leave to set a Matter of Fact right, as to the Case of *Fitz-Harris*, which was mentioned as an Authority against us, but in Truth is not so ; for though *Fitz-Harris's* Counsel did join in Demurrer immediately, yet that was not by the Coercion of the Court, but they voluntarily offered to join in Demurrer upon an Opinion, as I presume, of their own great Abilities and Self-Sufficiency in the Matter : But we have not that Opinion of our Extempore Performances, but desire Time to consider of this Matter. In my Lord *Preston's* Case, 'tis true, the Court would not give him Leave to send for his Letters Patent ; because, as my Lord had opened it, they were dated at *St. Germain's*, and granted by King *James* there, after his Abdication ; and it would have been the highest Indignity, both to the Court and the Government, to have such Letters Patent pleaded or insisted on ; which, if allowed, would have imply'd, that the Government was not well settled on their Majesties King *William* and Queen *Mary* ; and that King *James*, though at *St. Germain's*, had a Right to create Peers, and consequently was really King. And though it hath been said we are ty'd down by our Plea, I believe there are Instances, even in a Criminal Case, where a Plea hath been amended. I believe it was so done in the Case of my Lord *Banbury*, which was a Plea to the Jurisdiction of the Court. My Lord we shall desire but a very little Time ; which I hope will be granted us.

Mr. Kettlebey. In *Fitz-Harris's* Case the Plea Vol. vi. p. 241 was amended. The first Time it was brought in by himself to the Bar ; and being read, the Court assigned him Counsel, and gave him Time from Saturday to Wednesday to put the Plea in a Legal Form.

Att. Gen. I beg Leave to state that Fact right, as to *Fitz-Harris*. They say the Plea was put in, and afterwards amended : This is a Mistake. His Wife brought a Plea into Court, and press'd it might be received ; but Mr. *Fitz-Harris* was advised to consider what he did ; and thereupon he took it back,
and

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and brought in a Plea which was received, and never altered afterwards.

L. C. Justice. It is the first Time that ever in a Capital Case, when a Plea in Abatement was pleaded, and the Attorney-General thought fit to demur to it, that the Party desired Time to join in Demurrer. You are not entitled to any Time by the Course of the Court; and the Question is, Whether you have given any Reason for us to indulge you with Time, that never was granted in a Case of this Nature? Do you want Time to consider, whether you shall join in Demurrer? Can you do any Thing else? If you don't think fit to join, we must give Judgment against your Plea. Could you in this Case come with a Colour or Pretence of Justice, and desire of us to amend your Plea? It is nothing but a pure dilatory Plea; nothing but an affected Delay; and therefore you must join in Demurrer immediately, or we must give Judgment against your Plea.

The Court order
them to join in
Demurrer im-
mediately.

Mr. J. *Powis*,

Mr. J. *Eyre*,

Mr. J. *Fortescue-Aland*.

} You must instantly join
in Demurrer.

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Prisoner. My Lord, the Counsel for the King were indulged from Wednesday to Saturday. I hope I shall have the same Indulgence to consider whether I shall join in Demurrer, or not. I am so far from desiring to give any Delay, though I am satisfy'd how maliciously this Prosecution is carried on, that I am willing, rather than continue to be thus hunted up and down the World, to retract my Plea, and plead generally, *Not Guilty*.

The Prisoner
withdraws his
Plea of *Mis-*
nomer.

Mr. *Att. Gen.* If I understand the Prisoner right, he is willing to withdraw his Plea in Abatement, and abide by his Plea of not Guilty. This is what we desire likewise; and I wish we cou'd go on in this Cause as we ought in a decent manner, without having groundless Reflections continually made: Something hath been said of the Maliciousness of this Prosecution, and indirect Management by some body; 'tis not said by whom. My Lord, I defy any Man to shew any single Step taken in carrying on this Cause, but what is perfectly right and justifiable.

Mr. *Hungerford.* I dare say the Prisoner did not entertain a Thought of reflecting upon any of the Profession

Profession concerned in carrying on the Prosecution. But the Man's Case is hard: He tells you he is in Chains; and I see he is in great Pain even now; and I earnestly wish he were eas'd in that Matter. I do not pronounce these Words out of any Affectation of Popularity, or to captivate the Auditory, as was insinuated in the Beginning of this Proceeding, but in mere Compassion I have to the Prisoner.

L. C. Justice. You have been told, it is not in our Power: He did once Escape, and for the better securing him he was put in Chains: Can we take those Chains off? If he should escape out of the Tower, shall we not be guilty of his Escape?

Prisoner. If I thought it was contrary to Law I should not mention it; but I desire to observe, That these Chains were not put on till after a fourth or fifth Examination. As to my escaping out of the Messenger's Hands, he never shewed me his Warrant: I did not know what Authority he had to keep me. And as to escaping out of the Tower, it is not in my Power, neither is it in my Inclination: I desire therefore to be eas'd of these Chains; and that I may have an Opportunity to see my Relations; that my Wife may come to me.

Mr. Kettlebey. That was granted in *Fitz-Harris's* Case.

L. C. Justice. As to the taking off your Chains, Vol. vi. p. 243. you have had the Opinion of the Court; we cannot, we ought not to do it. As to the seeing his Relations, what do you say to it?

Mr. Att. Gen. There was a great deal of Caution us'd in *Fitz-Harris's* Case: As to the Persons permitted to see the Prisoner, they were to be search'd, and to be with him only in the Presence of the Keeper.

Mr. Kettlebey. The Wife had misbehaved herself there; and therefore a particular Caution was us'd in respect to her; but the Access of a Wife to her Husband, under such unfortunate Circumstances, was never deny'd.

L. C. Justice. Upon a proper Application to the Court, they have sometimes order'd that Persons may have Access to the Prisoner, in the Presence of the Gaoler, and not otherwise; and that they should be

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be searched. If you think fit to desire it on those Terms, the Court will consider of it.

Prisoner. I must desire upon those Terms the Court think fit; and that my Sister may come with my Wife.

L. C. Justice. It may be reasonable for them to have Access to you in the Presence of the Gaoler.

Mr. Serj. Pengelly. I beg leave to observe, whether it is usual for the Court to make such a Rule? In *Sir John Friend's Case*, it was only intimated by the Lord Chief Justice *Holt*; the Court did not make a Rule for it: They know they may apply properly, and Directions may be given to the Lieutenant of the *Tower*.

L. C. Justice. I do think, Brother *Pengelly*, that the Court are trusted in a Matter of this Nature, and may properly give Directions with such Cautions as they think fit. Is it the Wife or Sister you desire? I think one is enough; and she must submit to be search'd.

Mr. Serj. Pengelly. Before your Lordship makes a Rule in this Case for the Prisoner, I desire he may amend his Plea of Not Guilty, and plead by the Name of *Christopherus*.

L. C. Justice. It must be amended.

Plea amended.

Clerk of the Court. *Et predictus Christopherus Layer allocutus existens per Cur' hic de ali' prodiction' predict' pro Indictamentum predict' & superius Imposit' qualis' se velit' inde acquietari idem Christopherus Layer, dicit quod ipse in nullo est inde culpabilis & inde de bono & malo ponit' se super patram.*

Mr. Serj. Pengelly. My Lord, I believe it is usual in these Cases to appoint the Time of Tryal: The last Return but one in the Term is the 19th Day of *November*; so if you please it may be the *Quarto die post*.

Prisoner. I desire your Lordship will give me a longer Day to prepare for my Tryal: I have a great Number of Witnesses, most of them People of the first Quality: I hope I shall have the common Processes of the Court to bring them in; and that I may have an *Habeas Corpus ad Testificand'* to bring my Lord *North and Grey* and my Lord *Orrery* at my Trial; and if your Lordship please, it may be on *Monday* the 26th.

L. C. Justice.

L. C. Justice. That will be out of the Return, Vol. vi. p. 244. and it cannot be adjourn'd over beyond the Return: Three Weeks is a reasonable Time to prepare for your Defence; consider also the Term draws towards an End, and it interferes with the Common Business of the Term, if we carry it to a farther Day; we do agree the *Venire* to be return'd *Octab' Martin'*; and the Tryal then must be *Quarto die post*, which will be *Wednesday* the 21st; and it is proper for us to give you an Intimation now, not to expect any farther Time. Do but consider what a Multitude of Jurors must be brought up; Fourscore at least: The Prisoner hath a Privilege to challenge Thirty five peremptorily, and after, for Cause, as many as he pleases: And for them to attend here the 21st, and then the Trial to be put off, will be a great Inconvenience and Charge; therefore that must be the Day.

Prisoner. I have a Witness to come from *Edinburgh*; and I can hardly have him here by the 21st. Is there no other Return for a *Venire* to be returnable?

L. C. Justice. No; there is none but that, and the last Day of the Term; and it is impossible to try him that Day, without doing a manifest Wrong and Injustice to the People of *England*.

Prisoner. I hope I shall be indulg'd two or three Days.

L. C. Justice. We can say no more: The Time you have to prepare for your Tryal, we think abundantly sufficient; therefore we order the Trial to go on that Day.

Mr. Kettlebey. Your Lordship will order a Rule for his Wife and Sister to come to him.

L. C. Justice. No; not for his Wife and Sister.

Prisoner. My Lord, for a single Woman to come through the Courts and the Guards, to be examin'd by herself, it's not so proper my Lord.

L. C. Justice. You shall have a Rule for your Wife to come; we must not be too forward in granting Women to come; we remember an Escape occasion'd by a Woman's coming thither.

Mr. Kettlebey. My Lord, as to his having his *Habeas Corpus ad Testifican'* for my Lord North and Grey and my Lord Orery.

L. C. Justice.

The Trial of Christopher Layer Esq;

L. C. Justice. You must give Notice; and then move what you please.

Mr. Kettlebey. I desire he may have Copies of his Papers that were seiz'd.

L. C. Justice. Give Notice for what you think fit, and move it.

Die Mercurii 21 Die Novembris, 1722.

The Prisoner
brought to his
Trial.

This Day *Christopher Layer* was brought to the Bar by the Lieutenant of the *Tower*, in order to his Tryal.

Clerk of the Court. You *Christopher Layer*, now Prisoner at the Bar, these Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your Time to challenge them, is as they come to the Book to be sworn, and before they be sworn.

Mr. Hungerford. My Lord, we desire his Irons may be taken off.

The Prisoner's
Irons taken off.
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L. C. Justice. The Irons must be taken off. We will not stir till the Irons are taken off.

Mr. Hungerford. The poor Man hath been oppressed by these Chains, that he was not able to prepare his Brief: I had it not till it was late at Night; and it is ten Sheets of Paper.

Att. Gen. Whose Fault is that? You had Time enough.

Mr. Hungerford. It is the Fault of the Irons, *Mr. Attorney.*

L. C. Justice. They should have been taken off before he came to the Bar.

Att. Gen. There was Direction given for it. How they came not to be taken off, I cannot tell.

L. C. Justice. Now the Irons are taken off, go on.

Clerk of the Court. *Heneage Norton Esq;*

L. C. Justice. You must call over all the Jury.

Mr. Hungerford. I thought they would be all called over once before any one is endeavoured to be sworn.

Clerk of the Court. They have been called over already.

Mr. Hungerford. Not since the Court sat I am sure: I would know whether the Intention is, that all the Pannel be called over before any one of them is sworn; or that the Pannel is to be called over but once, and the Jurymen sworn as they then appear.

L. C. Justice. At the *Old Baily* they call them over first; and then they call them over again; and as they appear, they are sworn. But by the Course of the Court here, they are called over here before the Court is sitting, and they mark those that appear. Then they are called over again in Court, and their Appearance and Non-Appearance being marked, they call those over again that did appear. And as one appears, if there is no Objection to him, he must be sworn.

Mr. Kettlebey. We pray that the whole Pannel may be now called over in the Order as it stands, as well those who answered at the first Call, as those who made Default.

Prisoner. I have not had a Copy of the Pannel above two Days. Here has been in this Cause all the vile Practices ———

L. C. Justice. You must keep within due Bounds. You are come now to be try'd: But you are not to arraign and challenge every Body else; if in a proper Time it appears you have been ill used, the Court will do you Justice.

Serj. Pengelly. If they have any Objection to the Jury, they are to challenge them; they are not to entertain the Court with Speeches before.

L. C. Justice. No; it is not proper. Here he is insinuating Objections, which we cannot examine whether they are true or false, on Purpose to captivate the People; and, it may be, mislead them in the Trial of the Cause.

Mr. Kettlebey. As I came into Court, I observed all the Avenues were barricado'd up, and only a narrow Place left on the Stone-Steps; and a Guard there, to keep out whom they do not think fit to let in.

Att. Gen. I know nothing of it; and, I dare say, no body will give any Countenance to the hindering either Jurymen or Witnesses coming into Court, when their Attendance is required.

Mr. Hunger-

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Mr. Hungerford. I desire, my Lord, the whole Pannel may be called over once before the Prisoner is put to challenge.

L. C. Justice. I do not find the King's Counsel object to it.

Jury called over, and the Prisoner makes his Challenge. *Clerk of the Court having called over the whole Pannel, begins, and calls them again.* *Heneage Norton,* have you 10 l. a Year Freehold and Copyhold in the County of *Essex*.

Norton. I have no Freehold, only Copyhold.

[*Then he was set aside.*]

John Wilks. [*asked the same Question; as were all the rest.*]

Prisoner. I challenge him.

Henry Longbotham.

Prisoner. I think his Name is wrong spelled; he spells his Name with an *o*, and here it is with an *a*.

L. C. Justice. If the Copy delivered you agree with the Pannel, it will do.

Clerk of the Court. They are both spelled alike.

L. C. Justice. Then there is nothing in the Objection.

Prisoner. Then I challenge him.

Richard Waglett.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the King.

Vol. vi. p. 247. *Mr. Kettlebey.* We humbly insist that *Mr. Attorney* shew his Cause of Challenge immediately; for I beg Leave to observe upon this Pannel, that there are an Hundred and odd Persons; and if *Mr Attorney* is not obliged to shew his Cause of Challenge till all the Pannel is gone through, the Act of 33 *Edw. I.* which directs they shall assign a certain Cause of their Challenge, is of little Use.

L. C. Justice. You know the constant Practice is against you.

Mr. Hungerford. I propose it as a Convenience, that *Mr. Attorney* challenge first, and then we will determine after him.

L. C. Justice. No; we must not do that.

Thomas Howlet.

Prisoner. I challenge him.

Serj. Pengelley. If the Prisoner makes any Challenge, it must be before he comes to the Book to be sworn.

Prisoner.

Prisoner. Whenever I make a full Stop, and don't say I challenge, you do.

L. C. Justice. He ought not to lay his Hand on the Book, till he is allow'd a Juryman.

Mr. Hungerford. More hath been challenged for the King than hath been known in any Publick Trial in my Remembrance.

[*Here the Prisoner speaks to a Juryman.*]

Sol. Gen. My Lord, it hath been intimated to the Prisoner once already, that he ought to propose his Questions to the Court.

L. C. Justice. You are to ask no Questions yourself: If you tell us the Question, we will propose it.

Prisoner. Only to know how he spells his Name.

Mr. Hungerford. My Lord, it will be of some little Use to him to know how many he hath challenged; they differ in their Computation.

Clerk of the Crown. He hath challenged twenty-eight peremptorily.

Benjamin Rutland.

Prisoner. I desire he may be asked, whether he vol. vi. p. 248.
doth not farm something under the King, or on the Forest?

L. C. Justice. If it is so, it is no Objection.

Prisoner. I challenge him.

John Milligande.

Prisoner. My Lord, he hath been heard to say, that I ought to be hang'd.

[*David Martin called.*]

Mr. Hungerford. What have you heard Mr. Milligande declare concerning the Prisoner?

Martin. I have heard him say, that he hoped he should be hanged; for he believed he was guilty.

[*Mr. Milligande was set aside.*]

Prisoner. My Lord, I have very near all my Challenges: I think they may go on as they are called, if Mr. Attorney will challenge no more.

Mr. Attorney. You may go on your own Way, I will make no Bargains with you.

The Trial of Cristopher Layer Esq;

Clerk of the Court. Nicholas Freeman.

Prisoner. I challenge him. I think I have done all my Challenges.

Clerk of the Court. You have two more.

Prisoner. Let them take them as they come.

Clerk of the Court. John Bains. [*Set aside by Consent, because he was infirm.*]

Clerk of the Crown. William Sandford. [*Set aside because he had said, if he was one of the Jury he should be for hanging the Prisoner.*]

The Twelve Jurors sworn were as follow.

Thomas Clark Gent.	William Nicholson Esq;
Isaac Potter Gent.	Christopher Hill Gent.
Hezekiah Haynes Gent.	Robert Barnard Gent.
John Lowry Gent.	Thomas Waters Gent.
Thomas Prat Gent.	Richard Gray Gent.
Francis Aylett Gent.	William Wheatly Gent.

Clerk of the Court. Christopher Layer hold up your Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted, &c. Your Charge is to enquire, Whether he be Guilty of this High Treason in Manner and Form as he stands indicted, or Not guilty, &c.

Mr. Wearg. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the Prisoner for High Treason. The Indictment sets forth, &c. [*Here the Substance of the Indictment is repeated.*]

Solicitor-General opens the Indictment.

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[*Mr. Serjeant Pengelly having enumerated the several Overt-Acts laid in the Indictment, goes on.*]

Gentlemen,

Serjeant Pengelly's Observations on opening the Evidence.

IT is unnecessary when these Facts are opened to you, to acquaint you that an Attempt of this Nature, if it had succeeded, would have been the Subversion of the present happy Establishment, and the Protestant Succession, so often confirmed by the Consent of the whole Nation, and the only Security of your Religious and Civil Rights and Liberties. They would have all been exposed to the arbitrary Power of a Popish Faction under the Tyranny of the Pretender. [*Then the Serjeant proceeds to open the Evidence, which the Reader will find in the Trial itself.*]

Vol. vi. p. 250.

Att.

Att. Gen. **M**AY it please your Lordship, and you Gentlemen of the Jury, I am Counsel on the same Side for his Majesty against the Prisoner at the Bar, who stands indicted for High Treason, in compassing and imagining the Death of the King. The Preservation of the Life of the King is of that great Importance to the Safety and Prosperity of his Subjects; that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifested by Overt-Acts, are an Offence of the highest Nature which the Law takes Notice of: But as Imaginations and Intentions of Men are secret, and can't be discovered but by their Actions, there must be Proof of some Fact done, in order to carry such Intentions into Execution, to make the Offenders guilty of Treason; therefore in this Indictment five several Overt-Acts are laid: The first is, That the Prisoner proposed, consulted, and agreed, with divers Persons unknown to the Grand-Jury, to raise an Insurrection and Rebellion within this Kingdom against his Majesty: The second, That he published a traiterous Writing, purporting an Exhortation, Encouragement, and Promise of Rewards, to perswade his Majesty's faithful Subjects to take up Arms against him: The third, That he proposed, consulted, and agreed to set the Pretender on the Throne by armed Force: The fourth, That he listed Men to levy War against the King: And the fifth, That he proposed, consulted, and agreed to seize and imprison his Majesty's sacred Person.—*Gentlemen of the Jury*, You will readily agree with me, that nothing can be more dreadful to a true *Briton*, who hath any Regard to himself or his Posterity, than the fatal Consequences that must have inevitably attended such wicked Designs, had they been carried into Execution with Success. Suppose a Rebellion had been only raised, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder, and Rapin, and Murder? a total Suspension of all Civil Rights? and, as long as the Storm had continued, a just, but terrible Apprehension of something yet worse to come? This would certainly have been the Case, though the Attempt should have been disappointed at last. But had it been attended with Success, had his Majesty's sacred Person been seiz'd and imprisoned, and had the Pretender

*Mr. Attorney-
General's Observations on the Charge.*

Vol. vi. p. 254.

been placed on the Throne, what a Scene of Misery had opened? A mild Administration, govern'd by the Law of the Land, under an excellent Prince, and as just and merciful as ever wore the Crown, must have given Way to arbitrary Power: All your Estates and Properties must have been at the Will of a provoked and exasperated Usurper. Liberty must have given Way to Slavery; and the best of Religions to Popish Idolatry and Superstition; and this, humanly speaking, without any Prospect or Hopes of Relief. Nor would these dreadful Calamities have been confined within the Bounds of the King's Dominions; for should the present happy Establishment in his Majesty and the Royal Family (the chief Bulwark and Support of the Protestant Interest) be destroy'd, the Protestant Religion in general must be reduced to the lowest Ebb, if not totally extinguished. This is the Nature of the Crime; and these some of the fatal Consequences that must have ensued, if the Designs charged upon the Prisoner by the Indictment had took Effect. It is my Part to open the Nature of the Evidence that we shall produce to prove the several Overt-Acts. [*Here Mr. Attorney shews what Evidence they were about to give.*]

Vol. vi. p. 257.

Sol. Gen. We will now proceed to examine Witnesses. Call Mr. *Stephen Lynch*.

Prisoner. My Lord, I desire before this Witness be sworn, that he may be examined upon a *Voyez dire*, whether he hath not a Promise of Pardon, or some other Reward, for swearing against me.

L. C. Justice. Sir, you can't ask that Question.

Mr. Hungerford. If a Man is represented to be in the same Circumstances with the Prisoner, and the Prisoner led into the same Circumstances by the Person propos'd as a Witness, and afterwards by him involv'd in the same Offence: If the Person propos'd as a Witness hath a Promise of Pardon, or some Reward, upon Condition that he would swear against the Prisoner, he cannot by Law be a good Witness: The Person propos'd as a Witness, must be a credible Witness, must be a legal Witness, must not be convicted of Perjury, or any other notorious Offence; a free Witness that is not under any Restraint for the Offence he accuses another off: And there-

therefore we hope we have a Right of asking whether he acts under the Influence of any Promise of a Reward or Pardon; and the Right we have of examining him to the Promise of a Reward or Pardon, is supported by the Authority of my Lord Chief Justice *Hale*, as reported by *Kelynge*.

Mr. *Kettlebey*. I beg leave to observe to your Lordship, that this Question was formerly ask'd in the Trial of *Gordon* and *Dorrell*, of one *Adams* that had been in the same Conspiracy with those that were brought to Trial for High Treason, and was then produc'd as a Witness against them, though it was long objected to by the King's Counsel. The Distinction my Lord Chief Justice *Hale* made, was this. —

Mr. *Justice Eyre*. Read the whole Paragraph.

Mr. *Kettlebey*. I will, My Lord. The Words are these: "It was resolv'd that some of those Persons, equally culpable with the rest, may be made use of as Witnesses against their Fellows; and they are lawful Accusers or Witnesses within the Statute 1 *Edw.* VI. 12. 5 & 6 *Edw.* VI. 11. & 1 *Mary* I. And accordingly at the Trial of these Men, some of them who were Parties in the Treason were made use of against the rest. For lawful Witnesses within those Statutes, are such as the Law alloweth; and the Law alloweth every one to be a Witness who is not convicted, or made infamous for some Crime; and if it were not so, all Treasons would be safe; and it would be impossible for one who conspires with never so many Persons, to make a Discovery to any Purpose. But the Lord Chief Baron *Hale* said, that if one of these culpable Persons be promis'd his Pardon, on Condition to give Evidence against the rest, that disableth him to be a Witness against the others, because he is brib'd, by saving his Life to be a Witness: So that he makes a Difference, where the Promise of Pardon is to him for disclosing the Treason, and where it is for giving of Evidence. But some of the other Judges did not think the Promise of Pardon, if he gave Evidence, did disable him; but they all advis'd, that no such Promise should be made, or any Threatnings used to them, in case they did not give full Evidence." So that, My Lord, we have not only the Authority of that Book with us, but a solemn Precedent in

The Trial of Christopher Layer Esq;

this Court in Point establish'd upon a long Debate, and grounded on that very Authority. And when I mov'd this Matter at the Trial of *Dorrel, Gordon, and Kerr*, I then cited another Instance where it had been allow'd by the Court; and that was before Mr. Justice *Powel*, at *Worcester* Assizes, upon the Trial of *Palmer and Symonds*, for the Murder of Mrs. *Palmer*. There a third Person, concerned in the Fact, came in as a Witness against the other two; and after it had been argued by Counsel, and that learned Judge had read upon the Bench, and consider'd this Authority, the Witness was at last ask'd this Question upon a *Voyer dire*.

Serj. Pengelly. We hope there is no Room for this Pretence, which is insinuated; it only goes to his Credit, and does not disable him from being a Witness. The Judges directed that no such Promise should be made; but if such Promise was made, they agreed it did not disable him, as was mention'd by my Lord Chief Baron *Hale*. It is not like Money given, which is an actual Corruption; the Promise of Pardon is a Thing voluntary in itself. Who is the Promise to be made by? Is it in the Power of any Person but his Majesty to perform it? If there is any Thing in the Supposition, it is not proper to ask in relation to it upon a *Voyer dire*, to prevent the Witness from being sworn to give Evidence, but when he hath been sworn, if they think fit to ask the Question they may.

Att. Gen. The asking the Witness this Question, if it was answer'd in the affirmative, would be of no Service to the Prisoner; for it will not disable Mr. *Lynch* from being a Witness. Every Man is bound in Justice to give Evidence, if requir'd; and a Promise to have a Pardon if he gives Evidence against the Prisoner, can be look'd on only to induce him to do that which by Law he ought to do according to the Truth; it does not import, that he was to give a wrong or a false Evidence; such a Question he cannot be oblig'd to answer. And the greatest Use the Prisoner could make of such a Promise, if it was made, which is not admitted, would be only to the Credit of the Witness, and not entirely take off his Testimony. As to the Opinion of my Lord Chief Baron *Hale*, cited out of *Keynge*,

lynge, the other Judges differ'd with him; and therefore we hope Mr. *Lynch* shall be sworn.

Mr. *Hungerford*. Whoever is produc'd in a Court of Justice for a Witness, must appear to be utterly unconcerned in Point of Interest, in consequence of the Trial. If a Man produc'd as an Evidence to prove the Debt upon the Defendant, shall, upon being examined upon a *Voyer dire*, disclose that he is to have Part of the Money to be recover'd, is not such a Person disabled from being a Witness at all? And is not a Promise of Pardon to the Witness, in case he convicts the Criminal, a greater Bias than the Witness's having Part of the Money recover'd? In a civil Cause, the Question is not whether the Witness be tempted to swear a Truth or Falshood, but whether the Witness doth not appear to be so far concern'd in Point of Interest, that he ought not to be examin'd at all; and therefore I insist, we ought to have an Account whether the Witness *Lynch* hath the Promise of a Pardon or any Reward for that which he is to do here, namely, for the Evidence he is to give against the Prisoner. It is indifferent to me whether it will disable him from being a Witness absolutely, or go to his Credit only; for if it should come out that he hath such a Promise, we suppose no Jury, or any Man living, will believe him; and that is much the same as if he was not produc'd, though it seems more agreeable to the Practice in Civil Cases, that he should not be admitted as a Witness at all.

L. C. Justice. The most you can make of it is, That it is an Objection to his Credit; and if it goes to his Credit, must he not be sworn, and his Credit left to the Jury? But if this Man, under Expectation and Promise of a Pardon, comes here to swear that which is not true, and you would ask him to that, he is not oblig'd to answer it. No Body is to discredit himself; he is to be taken to be innocent till he appears otherwise. It is express'd, that he has a Promise of Pardon. What to do? To give Evidence; why should he not? Is he not oblig'd to it? Suppose he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The most you can say is, he has a Promise of Pardon, if he gives Evidence; and can you conclude from

thence, that he can give no Evidence, except a false Evidence? If they who ask the Question insinuate any Thing like that, it ought not to have an Answer; but if he hath a Promise of Pardon, if he gives a true Evidence, it is no Objection to his being a Witness, or to his Credit.

Mr. *Justice Eyre*. The Objection which gives occasion to insist upon this Question, arises from the Influence which the Hopes of a Pardon may possibly have upon the Witness; and if this be a Reason for setting aside a Witness, no Accomplice who discovers a Conspiracy can ever be allow'd to prove it upon Oath; for I believe no Man ever yet made a Discovery, but with the Hopes of Pardon; and a Government is oblig'd in Honour to grant it, where the Confession appears ingenuous and sincere; and therefore if the Hope or Prospect of a Pardon, which is all that can be inferr'd from a Promise, should be an Objection to the Competency of the Witness, no Government would be safe; for treasonable Conspiracies might be form'd and carried on with Impunity, when the Persons concern'd, from whom alone a full Discovery can be had, are utterly incapable of proving the Fact, though they give all possible Marks of their Sincerity; they have therefore been always allow'd to be Witnesses.

Mr. *J. Powis*. Mr. *Hungerford* would do well to remember the several Acts of Parliament made to give Encouragement, by a reward of 40*l.* for the Apprehending and Convicting of every false Coiner, Highwayman, and Housebreaker; and if a Criminal in these Offences shall come in, and discover and convict two of his Accomplices, he shall be entitled to a Pardon, and by the express Words of the 5 *Anna*, shall have the Reward of 40*l.* for each Housebreaker, and shall also himself be entitled to a Pardon; so that the Parliament thought fit to give Money, as well as a Pardon, to such Discoverer; yet ever since the making of those Acts, the Persons so promis'd and encouraged have upon those Trials been admitted as good Witnesses, even before a Pardon.

Mr. *J. Fortescue*. I was Counsel in the Case of the King and *Gordon*; and I very well remember the Counsel of the other Side insisted the Witness produc'd should be ask'd this Question on a *Voyer dire*,

dire: His Name was *Mayer*. The Reason the Court gave that it was improper to ask this Question on a *Voyer dire*, was, That if he had this Promise, such Promise was made either to speak the Truth, or to speak a Falshood; if it was to give a Just and True Evidence, there was no harm in it; and if it was a Promise of Pardon for speaking what was not true, the Witness was not bound to answer that Question, and consequently it can be of no use whatever. Therefore the Witness must be sworn.

The Prisoner's
Objections
against the Wit-
nesses over-
ruled.

[*Mr. Stephen Lynch sworn.*]

Sol. Gen. Do you know the Prisoner at the Bar? And how long have you known him?

Lynch. I first knew him about the Month of *June* last.

Sol. Gen. Pray give an Account to the Court and the Jury, by what Means you first came acquainted with him.

Lynch. I became acquainted with him by *Dr. Murphew*. About *April* last I came into *England* from *Flanders*, and met with *Dr. Murphew*, who was my Acquaintance several Years before: He told me he had some particular Business to tell me; and desir'd me to meet him at *Cooper's Coffee-House* in *Cornbill*; where I met him: He told me, That material Things were acting in the Kingdom, in order to a Rising; and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it. I ask'd Time to consider of it; and in two or three Days Time, I told him that I was resolv'd to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to. About the Month of *June* he told me, I should go with him to his Lodgings, which were at the Upper-end of *Chancery-Lane*, right over-against the *White-Hart*.

Sol. Gen. Whose Lodgings did you go to?

Lynch. The Lodgings of *Mr. Laver*. He was at home; and desir'd us to go to the *Griffin Tavern* in *Holborn*, and he wou'd meet us there. We went; and in a little while *Mr. Laver* came to us; and then *Dr. Murphew* told him that I was the Gentleman he had spoke to him of. *Mr. Laver* was glad of my

my Acquaintance; and told me, that he had such a strong Recommendation of me, that he was fully satisfied in me. And then he held a Discourse about a Rising that was to be in the Kingdom in favour of the Pretender, and that it would be back'd by a great many of the Army, and the Guards, and several other Gentlemen.

Objection
against giving
Evidence of
Overt Acts in
another County.

Mr. *Hungerford*. The Overt-Act is laid in *Essex*, and here is an Evidence given of an Overt-Act in *Middlesex*. They can give no Evidence of an Overt-Act in another County, till they have given Evidence of an Overt-Act in *Essex*, where the Indictment was laid; for by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin Tavern*, and of Mr. *Layer's* other Affignations and Actions in *Middlesex*; which cannot be imputed to him upon this Indictment, until some Treason be prov'd in *Essex*. I hope therefore the King's Counsel shall receive your Lordship's Directions to go on regularly: To begin to give an Account of the Overt-Acts in *Essex* before they go into another County.

L. C. Justice. You must give them Leave to go on in their own Method of that that first happen'd in *Middlesex*, and afterwards of what happen'd in *Essex*; and if you dare not trust them and us, but will have your own Method, it would be to put us into Confusion.

Sol. Gen. We insist upon it, in Point of Law, that we are intitled to give Evidence of Overt-Acts of the same Species of Treason laid in the Indictment, though done in any County in *England*, provided we also prove an Overt-Act in the County of *Essex*; which we must do; otherwise this will pass for nothing. Mr. *Lynch*, go on; and give an Account what Mr. *Layer* said when you were at the *Griffin Tavern*.

Evidence for
the King.

Lynch. The first Thing he told me, was, That he was glad to meet me. That he had had a good Recommendation of me from Dr. *Murphew*, as being a Man he cou'd confide in; and beginning his Discourse of an Insurrection in the Kingdom, he told me that they were back'd by a great many of the Army and the Guards. That there was a great many of the Nobility and Gentry of the Country, that would come in to them. He told me then,
That

That he wanted a Man of Resolution, that would take upon him the seizing of some Person of Note, as a General, or some other great Man. The Discourse run all upon the same Thing.

Sol. Gen. Recollect, as well as you can, the Particulars.

Lynch. He told me the general Design of the Revolution in the Kingdom in favour of the Pretender; and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me, they wanted a Man of Resolution to undertake, with some others, to seize a great Man, as a General, or some other great Man. At that Time I took upon my self to do it; so at that Time we discours'd no more. We were together about half an Hour.

Sol. Gen. When had you the next Meeting? and at what Place?

Lynch. A Day or two afterwards, at the same Tavern. When I came there, I sent a Boy for Mr. *Layer*, as he had order'd me to do when I wanted to see him; and he came to me. Then, talking over a Glass of Wine, he told me that he had pitch'd upon me to seize the Earl of *Cadogan*; and that I should chuse as many Persons as I thought fit, who would answer the same Design; and he being the Principal Man in the Army, it would discourage the King's Party, and animate the Pretender's Party; which, as I said before, I agreed to undertake, and to do the Utmost of my Endeavours to do it. Vol. vi. p. 261.

Mr. Serj. *Pengelly*. What Assistance was you to have?

Lynch. Such as I should chuse; such People as I could confide in, and should be proper to assist me.

Sol. Gen. Was any Thing said at that Time relating to any Person, who was to have the Conduct of the Design?

Lynch. He told me that there was some great Man that did not want Wit, Courage, or Resolution, and was at the Head of this Affair, who wou'd, at a proper Time, give me an Order to affect something further about it.

Mr. Serj. *Cbeshire*. Was there any other Meeting? and when?

Lynch. Some few Days after I came to the *Castle-Tavern* in *Holborn*, and sent for Mr. *Layer*; who came

The Trial of Christopher Layer Esq;

came to me; and we talk'd in general about the Uneasiness of the Nation, and the fair Opportunity there was to rise.

Att. Gen. Pray give an Account of what else pass'd.

Lynch. I say, the same Discourse we had at two Meetings before he repeated, and said, Now is a fair Opportunity, the Uneasiness of the People being such, to bring about a Revolution, since they would be back'd by the Army, and the Guards, and several other People.

Serj. Chesbire. Had you any other Meeting?

Lynch. A few Days after, we had several Meetings at Mr. Layer's House in *Southampton-Buildings*.

Serj. Chesbire. What was the Subject of your Discourse at the several Meetings?

Lynch. It was always upon the same: About the Rising and Uneasiness of the People, and the fair Opportunity of bringing about a Revolution; of the Disposition of the Army and the Guards.

Serj. Chesbire. Did he give you any Encouragement?

Lynch. After I met him at his House in *Southampton-Buildings*, I told him of my Uneasiness; because he had told me at the Beginning, that these Things would be soon put in Execution: I told him, if they were delayed, I was afraid they wou'd not succeed. He then animated me by telling me, that there was no Fear of its succeeding; and that I should not be discouraged; for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Management of the Scheme: That I should always keep a good Heart; and that Things went on very well.

Mr. West. Did he tell you in whose Favour this was to be?

Lynch. Yes; in favour of the Pretender; he mention'd him by the Name of King.

Serj. Chesbire. Do you know any Thing of his going into the Country?

Lynch. After I met him at his House, he went into the Country, and staid sixteen or seventeen Days. At his Return, I believe it was in *July*, I went to see him, and told him again how uneasy I was at the Delay. To which he answered, keep

keep a good Heart, all Things go on very well.

Serj. *Cheshire*. Was you to have any foreign Assistance?

Lynch. I asked him if he had any Promise of any Succour from any Power abroad. He told me, if we once made a Beginning, we should not want them: But did insinuate, that we should not want Encouragement from the Court of *France*.

Att. Gen. In what Manner did you express your Uneasiness?

Lynch. Nothing, but that I was uneasy; and I was afraid that Things did go wrong.

Sol. Gen. Did you say any Thing relating to your own Circumstances?

Lynch. In the Beginning I told Dr. *Murphew*, because it would be a long while, some five or six Weeks, before I was to be introduced to Mr. *Layer's* Company, that I came on my own particular Business; and my Circumstances would not permit me to be long here at my own Expence. At the Meeting with Mr. *Layer*, when I first made this Complaint to him, Mr. *Layer* told me, I should not want for a small Matter to maintain me in *England*. Accordingly Mr. *Layer* gave me some Money.

Att. Gen. How many Times had you Money Vol. vi. p. 262. of him? and what might it amount to together?

Lynch. Five or six Times: I cannot recollect; but, I believe, about eight or ten Guineas.

Att. Gen. What was it given for?

Lynch. To keep me in *England*; and to assist in the intended Design of the Revolution.

L. C. Justice. When you asked him, if he had any Encouragement from the Army, what did he say?

Lynch. He told me, that he had Encouragement from a great many of the Officers of the Army; that he had discoursed with several Serjeants of the Guard, who told him that the Common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. Justice. Did he give you any Reason for this?

Lynch. Mr. *Layer* told me, the Serjeants told him so before they were encamped; and complain'd of

of their ill Usage and hard Usage from the *Subaltern Officers*.

Serj. *Pengelly*. Was you acquainted with any Time or Day that was fixed.

Lynch. There was no fixed Time. Mr. *Layer* told me, it was to be upon the Rising of the Camp; because they could not talk with the Soldiers so well while they were encamped, as they could afterwards, when they were in their Quarters.

Serj. *Cheshire*. Was there any Consultation of viewing any one's House?

Lynch. He told me, it was fit to go and view the Earl of *Cadogan's* House in *Pickadilly*, in Case it was necessary to seize that Lord. Accordingly we appointed a Day to go; and I came to his Lodgings; and we took Coach, and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had some Business with him about an Estate which his Lordship was about buying. We went to his House; but my Lord was not to be spoke with, or was not within: I do not remember which; but we were conducted into his House; we view'd the inner Part of the House. Afterwards we went into the Garden; we viewed the lower Part of the Garden: Then we went out in the Yard, and took a View of the Avenues round about the House.

Serj. *Cheshire*. Had you any Discourse about the Feazibleness of it?

Lynch. Yes; that it was easy to be done, if we had but some resolute Gentlemen to stand by us.

Serj. *Cheshire*. Had you any Talk at that Time relating to the *Tower*?

Lynch. He told me, the *Tower* would be immediately surrendered to the Party on the Day the Plot was to be put in Execution. A certain Officer of the Guards would take upon him to mount the Guard there, who would facilitate the Delivery of the *Tower* to them. Afterwards, he said, there would be no Doubt of the *Mint*; they would be glad to take the Opportunity to shake off their Confinement; and that they would put Arms in their Hands, according as they repaired to their Party.

Att. Gen. When did you see the Prisoner next, after viewing my Lord *Cadogan's* House?

Lynch.

Lynch. I saw him at his own House, and at several Taverns in the City; and once he wrote to me, desiring me to come to his Lodging. Accordingly I went; and when I came to his House, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head-Tavern* in *Great Queen-Street*, near *Lincoln's-Inn-Fields*, and to enquire there for one *Mr. Wilson*; which I did; and I was conducted into a Room, where they said *Mr. Wilson* was, and *Mr. Laver*, and another Man, who seemed by his Cloaths to be a Serjeant of the Guards. We staid a little while, talked over the Business, and drank good Success to the Enterprize.

Att. Gen. Did the Prisoner at the Bar drink it?

Lynch. Yes; he did. I told the Prisoner when he went out, that I was mighty uneasy at the Delay of this Affair. He told me, I need not be uneasy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would lose no Opportunity when a fit Time offered. Vol. vi. p. 263.

L. C. Justice. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name; but said, that I should in a proper Time be presented to him, and receive my Commission and Orders from him to seize my Lord *Cadogan*.

Serj. Pengelly. We will now gratify the Prisoner's Counsel with an Account of what happened in *Essex*. Pray acquaint my Lord and the Jury when you went out of Town with *Mr. Laver*.

Lynch. My Lord, I was at *Mr. Laver's* House the Day the Bishop of *Rochester* was sent to the *Tower*. He asked me, if I would ride abroad with him the next Day, to take the Air? I consented to it, and came the next Morning to his House; and *Mr. Laver* asked me, if I mounted with Furniture? I told him, No; but that I had a Double-Barrel Fowling-Piece, which, if his Servant would carry, would do as well. He then desired me to go and stay for him without *Aldgate*, and get my Gun ready loaden; for he had that about him, which he would not lose for any Thing in the World. I went and staid till about Ten or Eleven o'Clock; when *Mr. Laver* met me, and gave the Gun to his Servant to carry. On the Road he told me that we were going to my Lord

North and

North and Grey's, whom he was very well acquainted with ; and that he would recommend me to him as a Friend of his. When we got to the *Green-Man* he told me, we had better go in and dine there, because Dinner Time would be over before we could get to my Lord *North and Grey's*. Whilst Dinner was getting ready, we had several Discourses on the same Subject, of the Uneasiness of the Nation, and its Inclination to a Revolution, and how to bring it about. Upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it. I remember some Lines of it, which was, in general; to invite the Nation to an Insurrection, and to shake off the Calamities and Miseries they endured under the present Ministry. And it was mention'd in the said Paper, that the Earl of *Cadogan* was actually in their Custody, thereby encouraging the Army to revolt, with an Offer of three Guineas to every Horseman and Serjeant, and two Guineas to every Corporal, and one Guinea to every Common Soldier, to be paid immediately on the joining the Party, and a Promise of further Preferment.

Att. Gen. Do you know whose Hand-Writing it was ?

Lynch. According to our Discourse, I thought it might be his Writing. He talked of it as being of his own making. Besides there were several Interlineations, Dashings-out, and Interlineations afterwards. He was very well satisfied and easy as to me; and said he could wish that he could bring Matters about so, as that I could have the sole Direction of seizing some of the Ministry, and, namely, my Lord *Townshend*, my Lord *Carteret*, and Mr. *Walpole*.

Att. Gen. Was there any Discourse about seizing the King ?

Lynch. He said when the Design was put in Execution, the Army would declare in their Favour, and they would send a strong Guard to take Care of the King's Person, to keep him in Security from any Insult.

Serj. Pengelly. Was there any Discourse about a Scheme or Plan.

Lynch. He told me there was a Scheme laid on that Foot ; of which I told you the first Step was to seize the Earl of *Cadogan*, and then, according

as the Army came over, to take care and seize the King's Person; and he thought the proper Time to put this in Execution would be at the Rising of the Camp in *Hyde-Park*; and when I shewed my Uneasiness at the long Delay, he told me, if I could think or propose any Thing more proper, that I should do it. After that we rode towards *Epping*, and went to my Lord *North and Grey's*; and there Mr. *Layer* introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Evening we came away in Company with another Gentleman that I did not know; but we talked on the Road about the Situation of my Lord's House; and Mr. *Layer* told me he had recommended me to his Lordship as his particular Friend, and asked me how I liked my Lord *North and Grey*?

Mr. *Reeve*. Had you any talk with him about the Person who was to have the chief Command?

Lynch. Yes; but he never named the Person.

Mr. *West*. Was you any other Time at my Lord *North and Grey's*?

Lynch. Yes; another Time I went to my Lord *North and Grey's*, where I found Mr. *Layer*, and expressed to Mr. *Layer* the Uneasiness I was in at the long Delay; and that I was afraid our Hopes would vanish; and told him, that if Things were not soon put in Execution, I would withdraw myself. Mr. *Layer* bid me not be uneasy, Things might perhaps be sooner put in Execution than I imagined.

Mr. *West*. Did you come Home together?

Lynch. No; I came home that Night: Mr. *Layer* remained there.

Serj. *Pengelly*. Did you see him sometime afterwards?

Lynch. I met him at his own House; where expressing my Uneasiness, as formerly, he said I should not be uneasy, for Things would soon take Effect; and bid me get myself ready to execute my Design, because they had Notice the Camp would soon break up; which was the Time designed to put Things in Execution. And at another Time he told me, that the Declaration which he had shewn me at the *Green-Man* had mentioned no particular Persons, but in general the Safety and Publick Good of the Kingdom. There was nothing mentioned of the Pretender in it; but that he had thought fit to put it

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now in the Pretender's Name ; and he told me he had given the Declaration to a nonjuring Minister to get printed, and had given twenty Guineas for that Purpose.

Serj. *Chebbire*. When you expressed your Uneasiness, did Mr. *Layer* use any Vehemence of Expression ?

Lynch. He said several Times, when I was so irresolute and uneasy; Don't you be uneasy; rather than all should fail, I will stir up, and be a second *Massinello*.

Mr. *West*. Had you any Conversation about the taking up of any Person ?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs should be taken up, every Thing would be quashed.

Serj. *Pengelly*. That Nobleman was not taken up at that Time then ?

Lynch. No.

Serj. *Pengelly*. What Recommendation had you to my Lord *North and Grey*.

Lynch. Only as a Friend of Mr. *Layer's*, to pass away the Time in Summer.

Mr. *Hungerford*. If they have given all the Evidence they intend to give of an Overt-Act in *Essex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now, before they shall be permitted to give Evidence of any farther Overt-Act of Treason in another County, at Liberty to object, That the Transaction in *Essex*, is not an Overt-Act at all of the Treason laid in this Indictment.

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Sol. Gen. When we have given our Evidence, then it will be proper to make their Objections to the Whole.

Mr. *Kettlebey*. Will your Lordship indulge us to ask the Witness a Question or two now ?

L. C. Justice. Propose your Questions, and we will tell you.

Mr. *Kettlebey*. Whether he hath any Offer or Promise of Pardon proposed to him to induce him to give Evidence against the Prisoner.

Lynch. No, Sir; I have no Promise of Pardon at all. I only do this out of Justice, to make what Reparation I can, and to save the Blood of many People.

Mr.

Mr. Kettlebey. I think you say the first Time you were introduced into this Gentleman's Company, he told you he had great Designs in hand; that there was an Insurrection designed; and that they wanted a Person of Resolution to seize a General: How came you to have that Share of Confidence in a Man you never saw before.

Lynch. I told you I discoursed with Dr. *Murphew* a great many Days and Weeks, before I saw Mr. *Layer*, about the Insurrection; and that he told me he would recommend me to a Man who had the Management of the greatest Part in this Affair; and when it was a proper Time he would introduce me to him.

Mr. Kettlebey. How came you to have that mighty Dependence on Dr. *Murphew*? I hope you was not in any wicked Design with him, and so much acquainted as to recommend you in a Case of Treason.

Lynch. We had been acquainted several Years: There was a common Friendship between us.

Mr. Kettlebey. How long was you at the *Green-Man* with Mr. *Layer*? an Hour, or two, or three?

Lynch. I can't say we were there an Hour or two; but we had something dress'd for Dinner; and the Matter was discoursed of by us before Dinner.

Mr. Kettlebey. What Room was you shewn into.

Lynch. We were shewn into a Room up one Pair of Stairs on the Right Hand, the first Room. It looked into the Common Road.

Mr. Kettlebey. Did not you look out of the Window, and say you saw two Gentlemen of your Acquaintance, and go down to them?

Lynch. I said, I saw two Gentlemen I thought I had seen before, but did not go down to them.

Prisoner. How long were we together at the *Green-Man*? were the Horses put up?

Lynch. I can't tell.

Prisoner. Was there any Thing dress'd for our Dinner but a Beef-Steak?

Lynch. No; nothing else.

Prisoner. Did not you go down Stairs?

Lynch. I went twice down Stairs before Dinner; but did not stay two Minutes both Times.

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Prisoner. Was this Discourse before or after Dinner?

Lynch. It was before Dinner.

Prisoner. How much Time did we spend before Dinner? half an Hour, or an Hour?

Lynch. I don't remember; but it was a good while.

Prisoner. At the Time of Dinner, was my Servant or the Drawer in the Room?

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Lynch. Neither of them was in the Room.

Mr. Hungerford. Have you any Copy of the Paper he gave you to read.

Lynch. No.

Mr. Hungerford. Was the whole of it of any Length.

Lynch. To the best of my Remembrance, it was a common Sheet of Paper written: He doubled it down, and gave me only the latter Part of it to read.

Prisoner. Was not the Paper blotted?

Lynch. There were two or three Places interlined.

Mr. Hungerford. We hope they shall not give Evidence of Overt-Acts out of the County of *Essex*, till they have gone through their Proofs in that County.

L. C. Justice. You have been told they should proceed in their own Method.

Att. Gen. He talks so loud to his Counsel, the Jury may hear every Word he says: I heard him say, It was strange to go on with Evidence that would not be to the Purpose.

L. C. Justice. You have a Right to discourse with your Counsel, *Mr. Layer*; but you must do it in such a Manner that the Jury do not hear.

[Matthew Plunket sworn.]

Mr. Serj. Chesbire. Tell the Court if you know the Prisoner at the Bar, and how you came acquainted with him.

Plunkett. One Major *Barnwell* first brought me acquainted with *Mr. Layer*. He had an Execution in his House; and this Major *Barnwell* came to me, and desir'd me to get a Couple of Grenadiers. I brought him two. We went to *Mr. Layer's* House; and his Clerk let us in at the Back-Door; and the Grenadiers

Grenadiers turn'd the Officers out, and Mr. *Layer* gave them a Crown and a Glass of Brandy. This was about five Years ago. Afterwards Major *Barnwell* was arrested; and sent me with a Letter to Mr. *Layer's* House, to desire him to relieve him. This was four Years ago.

Serj. *Chebbire*. Do you know any Thing of one *James Plunket*?

Plunket. Yes; he came to me from Mr. *Layer* in July last, to desire me to meet him. I don't know what he is, nor how he gets his Bread.

L. C. *Justice*. Go on.

Plunket. Mr. *Layer* paid the Charges for Major *Barnwell*; and brought him out of the *Marshalsea*.

Mr. *Reeve*. How came you last acquainted with Mr. *Layer*?

Plunket. In July last *James Plunket* came to my Room; and asked me if I was not well acquainted with the Army? Yes, said I, I know a great many in the Army, both Officers and Soldiers. Do you know, saith he, any Serjeants of the Guards? I know some of them, said I. He brought me out of the Room, because my Wife was there; and then he opened his Mind to me; saith he, Do you know Mr. *Layer*? I had forgot the Gentleman, being so slightly acquainted with him: No, saith I, I don't know him. No matter, saith he, I have appointed a Place for you to meet him at, at the *Italian Coffee-House* in *Russel-Court*; and at the End of this, Mr. *Plunket* asked me to keep Correspondence with them for the Pretender's Service. I did not go to the *Italian Coffee-House*, not being in a proper Station, nor having Money for that purpose, so I did not think proper to go to the *Italian Coffee-House*; but the Sunday following I went to St. *Andrew's-Church* to hear Dr. *Sacheverel*; and as I was going home, between Twelve and One o' Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*: Mr. *Layer* look'd at me: He was really a perfect Stranger to me, for I did not know him again; saith he, Is not your name *Plunket*? Yes, saith I. Was there not one with you t'other Night, one *James Plunket*? Yes, Sir, said I. Where did he desire you to go? said he. I answer'd, he desir'd me to go to the *Italian Coffee-House* in *Russel-Court*. Saith he, 'Tis well enough: Do you not know me? No, saith

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I; you have the Advantage of me : I ask your Pardon for I don't remember you. Don't you remember one *Layer*, said he? Then I call'd to Mind that I knew the Gentleman. Saith he, will you walk on this Side? I walk'd back again towards *Little-Turn-Stile*, and we struck up the Wall-side, and just as we came under a great Coach-House Gateway we went in, and in the Gateway he talk'd to me: Saith he, I am told you are a very Honest Man, and well affected So and So.

Mr. Reeve. Well affected to whom?

Plunket. Well affected as to the Business of the Pretender. At the same Time he bid me not mention it to *James Plunket*, that I had seen him. Then he asked me if I knew any Serjeants in the Guards; for, saith he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough amongst us; but if we could get some old Soldiers, if that could be managed, they would be finely rewarded. But, Sir, said I, the Pretender is a *Papist*. Says he, we had as good have a *Papist* for our King as a *Lutheran*; I don't know what Difference there is; but as it was, the Nation was enslav'd, and the People were obliged to be Slaves. I ask'd him, Sir, Who is the Promoter of this, that may join us? You see, says he, what Injustice is done to you; you have serv'd abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord *North and Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. He ask'd me what I thought of him? I said, I had never been under his Command; but I look'd upon him to be a great Man. Then he mention'd my Lord *Strafford*, What do you think of him? To which I made the like Answer. And what do you think of General *Primrose*? I said, he was an old Man; however, Mr. *Layer* said he was a brave General. Then he ask'd me what I thought of General *Webb*? I said, I had heard of his Fame.

L. C. Justice. Did he tell you how many Soldiers he wanted? or was there any Thing said about their Names?

Plunket. I said, I knew a great many, and that I could get Twenty-five. Saith he, You ought to have a List of their Names where they lodge, that they

they may be in Readiness for a Call; and, saith he, this would have gone on some Time ago, only somebody made a Discovery of it to the *French* Ambassador, and he wrote to the Regent, and so it was discovered to the King; and, saith he, the Duke of *Ormond* was to come in one Ship, and General *Dillon* in another; and they would bring their Numbers with them; and then I should see that the Army would not oppose them; and when I parted with him he gave me Half a Crown, to encourage me, and said he would send a Messenger to me. And in a Day or two after there came a Messenger, a Unjuring Minister, his Name was *Jeffereys*; but I was not at home; he spoke with my Wife. Five or six Days after he came again, and asked me if I knew Mr. *Layer*? I told him I did. Then he carry'd me to the *Castle-Tavern* in *Drury-Lane*, and gave me two Pints of Wine. He told me he was employ'd by Mr. *Layer*, to go to such as I was, who were old Serjeants, to get a parcel together to discipline Citizens and other Mob in the Country.

Att. Gen. What farther pass'd between you and Mr. *Jeffereys*?

Mr. *Kettlebey*. I beg leave to Object to that Question.

L. C. Justice. You know that many Times in Discourse, it is necessary to mention Introductions to let in what is material: Whatever pass'd between him and *Jeffereys* don't affect your Client.

Mr. *Hungerford*. It is a constant Rule, if a Man speaks of a third Person's Transactions, it is declared as nothing, and commonly stopt from being given in Evidence.

L. C. Justice. Let the Evidence be given in such a Manner as may be understood; what is Introductory goes for nothing, but is in order to explain the Evidence.

Att. Gen. What pass'd between you and the Non-juring Parson at the *Castle-Tavern*.

Plunket. He desir'd me to get Men in Readiness; and told me he had a great many to go to, besides me, with this Errand. Another Time he came to me, we went to the *Cock and Bottle Ale-House* in the *Strand*, and gave me Half a Guinea; and said, There is a Token; Mr. *Layer* had sent it me, to give me Encouragement; and Mr. *Layer* had told me

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he would send me Money by the Messenger. Some Time after I met Mr. *Layer* at the *Castle-Tavern* in *Drury-Lane*. He call'd for two Bottles of Wine; and when he had discours'd me about the *Affair*, he gave me a Crown to encourage me to List Men for the Pretender.

Att. Gen. Had you a Letter by the Penny-Post?

Plunket. That Morning Mr. *Layer* was going into *Norfolk*, *Plunket* told me he would be glad to see me. I went to Mr. *Layer*, and his Horses were at the Door. He desir'd me to walk up two Pair of Stairs forwards, and by the same Token, order'd his Servant to charge his Blunderbuss in the Room. Saith Mr. *Layer*, I have given a Guinea to the Nonjuring Minister to give you, to do what Service you can; and when I am abroad you may be sure I shall not be idle. I brought *John Child*, an old Soldier, with me to Mr. *Layer's*, thinking he might have been of Service to them.

Serj. Pengelly. What did Mr. *Layer* desire of you?

Plunket. He desir'd me to see and get what Soldiers I could for him: I came to the Nonjuring Minister, and told him I had got five and twenty. Mr. *Layer* ask'd me, why I did not bring a List of them, that he might know where their Habitations were, and they might be in a Readiness at the Time? I disputed with Mr. *Layer* what they would do for Arms. No fear of Arms, said he, Arms will be provided for them. After he returned out of the Country, Mr. *Plunket* came and told me Mr. *Layer* was come to Town; and the Nonjuring Parson sent me a Letter by the Penny-Post. Mr. *Child* was in my Room; and read it: The Contents were, *Mr. Layer is come to Town, and would be very glad to see you: No more, but your humble Servant William Jeffereys.* By this I knew his Name. I went to Mr. *Layer's* House; and he gave me a Guinea with his own Hand, and I recommended Mr. *Child* to him.

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Mr. Serj. Pengelly. What did *Layer* say, when you recommended Mr. *Child*?

Plunket. He said, he had no Business for him.

Serj. Pengelly. Did you ever receive any Money to give to *Child*?

Plunket.

Plunket. I receiv'd Half a Guinea of Mr. *Loyer*, to give to Mr. *Child* to be trusty to him, and to be a Pretender's Man, whom he call'd King.

Serj. Pengelly. Had you any Talk with him any other Time.

Plunket. The *Sunday* before he was taken up, I was with him in his Parlour, and he said, the King, meaning the Pretender, was as fine a Shooter as any in *Europe*, he shot Nineteen out of Twenty. I said that was fine Shooting.

Att. Gen. Can you recollect any other Discourse there was at that Time?

Plunket. Yes; I ask'd him what Rewards those Men would have, who should do service for their King and Country. He told me, That they and their Families were to be for ever taken Care off. He said, if I would follow his Directions, he would promote me: That he would engage to do great Matters for me; and what I suffer'd in the Army, he would make me amends for.

Serj. Pengelly. Had you any Discourse about the Disposition of the Nation, or any Persons at Court?

Plunket. He said, most of the Nation was tired with the present Government. That King *George* was for ruining the Nation: There were but only eight or nine Upstarts that belong'd to King *George's* Court: That the antient Peers of the Realm would not be run down; for they should be made Slaves, if they did not prevent it.

Serj. Pengelly. Had you any Discourse any other Time about the *Dutch*, or the *French*?

Plunket. Yes; I remember he said, Here is a *Dutch* Army come in upon this Nation; and the *French* will come in, and take our Rights and Liberties from us: You will keep a *Dutch* Army; and it will be to make a War among ourselves.

Serj. Cheshire. What would he have to cure all this?

Plunket. He told me, That when the Insurrection was, there would be a great many Half-Pay Officers as I knew, that would be on the Pretender's Side.

Prisoner. You say your first Acquaintance with me, was by Major *Barnwell*?

Plunket.

Plunket. Yes; Major *Barnwell* sent me to get a Couple of Grenadiers; and you order'd your Clerk to let them in at the Back-Door; and the two Grenadiers drove out the Officers, and were confined afterwards in the *Savoy* for it.

Prisoner. Was it the Landlord's Goods of the House, or my Goods?

Plunket. I can't tell whether they were yours or his: They were in your House.

Prisoner. You say five Years afterwards I met you in *Lincoln's-Inn-Fields*, and gave you half a Crown to drink, and I told you my Lord *North and Grey* was to be General; that my Lord *Strafford* was concern'd in it.

Plunket. No; you told me they were Promoters of the Conspiracy.

Prisoner. So you did not know me, nor I you?

Plunket. Yes; you knew me. Afterwards we met one another, says you, Don't tell *Plunket* you met me.

Prisoner. Where lives *James Plunket*?

Plunket. I don't know.

Prisoner. Did not you come to my House some Time after this, and desire me to lend you thirteen Shillings, on Account of being Bail in an Action in the Marshal's Court?

Plunket. That was two Months after. There was a Soldier arrested by a Martial's Court Writ, and you lent me thirteen Shillings, in order to discharge him.

Prisoner. Did you never borrow any Money of me?

Plunket. I never borrow'd any Money of you, otherwise than to get Men list'd for the Pretender.

Mr. Kettlebey. What Discourse had you with *James Plunket* the first Time he came to you? Did he talk to you about list'ing Men for the Pretender?

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Plunket. No; he only desir'd me to meet Mr. *Layer* at the *Italian Coffee-House*.

Mr. Kettlebey. What Discourse had you with the Nonjuring Parson? The Unjuring Parson, as you call him.

Plunket. The same Discourse pass'd between us, about list'ing Men.

Mr.

Mr. Kettlebey. What! the first Time you saw James Plunket, and the first Time you saw the Nonjuring Parson?

Plunket. Because he came from Mr. Layer.

Mr. Kettlebey. So you trusted both of them at first Sight? and talk'd to 'em about lifting Men for the Pretender?

Plunket. Yes; both talk'd to me.

L. C. Justice. Did the Nonjuring Parson tell you his Name the first Time?

Plunket. He told me his Name was Jeffereys; but did not tell me his Christian Name.

L. C. Justice. How long after was it the Letter was sent you by Mr. Jeffereys?

Plunket. About ten Weeks after, when Mr. Layer came from the Country.

Mr. Kettlebey. How came you to remember the Contents of the Letter so exactly?

Plunket. I heard it repeated over.

Mr. Kettlebey. Pray repeat it over again.

Plunket. Mr. Plunket, Mr. Layer is come to Town; I should be very glad to see you.

Mr. Kettlebey. You can read Writing?

Plunket. No; I cannot.

Mr. Kettlebey. How can you be so particular as to the Writing?

Plunket. John Child read it over to me two or three Times.

Prisoner. What Countryman are you?

Plunket. An Irishman; you knew that long ago.

Mr. Serj. Pengelly. We shall now produce the Plan of this Conspiracy.

[John Turner, one of the Messengers, sworn.]

Att. Gen. Look upon these Papers; do you know where they were found?

Turner. My Lord, by Warrant from my Lord Carteret, principal Secretary of State, dated the 29th of September last, I was directed to search for one Mrs. Mason and Mrs. Cook; and on the very same Day I executed that Warrant. I found out Mrs. Cook's House in Stone-Cutters-Yard in Little Queen-Street, near Lincoln's-Inn-Fields; Mrs. Mason lodg'd there; and in her Lodging I found a Trunk, which upon

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upon Demand she opened; and in the Trunk were two Bundles of Papers seal'd up; which Papers being opened, this Paper was found amongst them, [*pointing to the Plan or Scheme.*]

Serj. Pengelly. How do you know it to be the same?

Turner. I set my Mark upon it. [*The same be deposed of all the other Papers found in the two Bundles.*]

Mr. Justice Fortescue-Aland. Were the Bundles seal'd up?

Turner. They were seal'd up when we took them out of the Trunk.

Mr. Kettlebey. How come you to be so positive, that these individual Papers are the same you found in Mrs. Mason's Room?

Turner. I put my Name upon them.

Mr. Kettlebey. Did you put your Name on them before you parted with them?

Turner. After the Trunk was open, and the Bundles open'd, finding Papers of Consequence, I was directed to fetch Mr. Stanyan, as being a Magistrate, to give that Person her Oath. While I was gone, I deliver'd the Papers into my Brother Messenger's Hands, and he sign'd them.

Mr. Kettlebey. How long after your first seizing the Papers was it, before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. Kettlebey. How can you swear they are the same, when you went away and left them in your Brother Messenger's Hands, and did not set your Name upon them till you return'd?

[Edward Speare, the other Messenger, sworn.]

Vol. vi. p. 272. Att. Gen. Did you go with Mr. Turner to seize any Papers at Mrs. Cook's House?

Speare. By Warrant directed to us by my Lord Carteret, Mr. Turner and I were to seize Mrs. Cook and Mrs. Mason; and searching Mrs. Cook's House, I found Mrs. Mason there, and in her Room a Trunk, which I order'd to be open'd, and took two Parcels out of it, one of them was seal'd with three Seals, which I look'd at: They did not appear to have been open'd, and seal'd again. I open'd them and mark'd

mark'd them. *Mrs. Mason* was by when I open'd them; and these are the very Papers that were taken out of the Trunk.

Serj. Cheshire. Were they ever out of your Custody, till you mark'd them?

Sol. Gen. While *Turner* was gone for *Mr. Stanyan*, who had the Custody of them?

Speare. I had the Custody of them.

L. C. Justice. How long after he return'd, did you set your Name on them?

Speare. Immediately, my Lord.

Mr. Kettlebey. How long after you seiz'd those two Bundles was it, before *Mr. Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. Kettlebey. What did you deliver them to *Mr. Stanyan* then?

Speare. After *Mr. Turner* and I had sign'd them, I delivered them to *Mr. Stanyan*.

[*Mrs. Elizabeth Mason sworn.*]

Att. Gen. Give an Account what you know of these Papers?

Mrs. Mason. *Mr. Loyer* deliver'd me the largest Bundle; and told me it was of the Value of two hundred Pounds; and desir'd me to take care of it.

Serj. Cheshire. When was the lesser Bundle deliver'd you?

Mrs. Mason. Some Time after. And after that he took them away from me; and in four or five Days Time he brought them to me again; and told me they were a few Love-Letters, and begg'd of me not to let *Mrs. Cook* know of it, for she would make a Disturbance, and tell his Wife. They were both seal'd; and I put them in my Trunk. In the Beginning of *Bartholomew-Tide*, he came in the Afternoon to our House, and I was not at home. He left a Message for me, that I should bring those Writings home. I carried them home to *Mr. Loyer's* House. He had left Word he would be at home by Eight o'Clock at Night. I was there about Eight o'Clock; and the Maid told me, he was in the Back-Parlour with a Gentleman or two; but he came out to me, and I gave him the Writings. He desir'd

Vol. vi. p. 273. fir'd me to come again the next Morning, and take those Writings again, for he was going out of Town; which accordingly I did about Eleven o'Clock, as the Bell was ringing at *Lincoln's-Inn* Chappel, and he deliver'd me the Papers again.

Sol. Gen. What Day of the Week was it?

Mrs. Mason. It was on Friday Night that I carried them to his House; and the next Morning at Eleven o'Clock he deliver'd the Writings to me again, and desir'd me to take care of them.

Serj. Cheshire. Did you meddle with them, or open them?

Mrs. Mason. No; I put them in my Trunk, and they lay there all the Time.

Serj. Cheshire. Was you there when the Bundles were open'd?

Mrs. Mason. Yes; and I mark'd the Papers.

Serj. Cheshire. Look upon the Papers, and see if you find your Mark on them.

Mrs. Mason. Yes; this is my Mark.

Mr. Hungerford. Can you write?

Mrs. Mason. No.

Mr. Hungerford. Have you made the same Mark on all the Papers?

Mrs. Mason. I was so frighted at that Time, that I hardly knew what Mark I made.

Mr. Hungerford. If you was so frighten'd, and did not know what Mark you made, how can you be sure you know your Mark again?

Mrs. Mason. Yes; I can tell it very well.

Mr. Hungerford. Upon the Oath you have taken; hath any Body seen those Papers before they were taken by the Messengers? whether Sir *John Meers*, or his Man *Thomas*, hath seen them?

Mrs. Mason. No.

Mr. Kettlebey. Nor his Man *Thomas*?

Mrs. Mason. No; nor his Man *Thomas*.

Mr. Kettlebey. Pray make the Mark you generally use. I desire she may have a Pen and Ink, to see if she can make the same Mark again.

[*A Pen, Ink, and Paper, is given her; and she sets her Mark, an E and M.*]

L. C. Justice. [*Having compar'd the Letters made by Mrs. Mason in Court with those on the Papers.*]

Papers.] The Character which she now writes, is like what she writ on those Papers, and so confirms her Evidence.

Mr. Kettlebey. I ask you whether Sir *John Meers's* Man *Thomas* ever saw those Bundles opened?

Mrs. Mason. No; he never was up in my Room; there was no such Familiarity between us.

Mr. Kettlebey. Did you ever produce them seal'd up? Did you ever let *Thomas*, or *William*, or Sir *John Meers* himself, see either of these Bundles, as they were seal'd up?

Mrs. Mason. No; they were in my Trunk. I Vol. vi. p. 274
always kept them in my Trunk. Perhaps as I opened my Trunk, they might see them lie in my Trunk.

L. C. Justice. When these Bundles were seiz'd, had they Mr. *Layer's* Seal upon them?

Mrs. Mason. Yes; the Seal of Mr. *Layer* was upon them.

L. C. Justice. What says the Messenger?

Messenger. There were three Seals upon one, and some Seals upon the other.

L. C. Justice. What is Mr. *Layer's* Seal?

Mrs. Mason. Something of a Head, with a Ruff about it.

L. C. Justice. Look upon the Head: Is that the Seal of Mr. *Layer*?

Mrs. Mason. Yes; upon my Oath it is.

L. C. Justice. Was that Seal upon them when the Messenger seiz'd them?

Messenger. Yes; it was.

Mr. Hungerford. What Trade or Business do you follow? what is your Occupation?

Mrs. Mason. What is that to you? I have no Trade.

M. Hungerford. Have you not a Promise of Reward for the Service you do here, in giving this Evidence?

Mrs. Mason. No; I have not.

Prisoner. Nor you have receiv'd none?

Mrs. Mason. No; you are an unjust Man.

L. C. Justice. Why don't you ask her, whether she is to swear for Hire? Is that a proper Question?

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Att. Gen. Do you know what Names the Prisoner at the Bar has gone by?

Mrs. Mason. He once gave me Orders, that if any Letter came directed in the Name of *Fountaine*, I should take it in: Accordingly in two or three Days Time there came a Letter, directed to Mr. *Fountaine*, and I took it in; and when he came, I gave it him, and he opened it, and read it.

Prisoner. How can you tell how that Letter was directed, since you say you cannot read?

Mrs. Mason. Mrs. *Cook* read the Supercription. It was brought by a Porter; he told me, he came from the Ditch-Side, and asked me if Mr. *Fountaine* lodged there.

[*Mr. Doyley sworn.*]

Vol. vi. p. 275.

Att. Gen. How long have you known Mr. *Layer*?

Doyley. About Seventeen or Eighteen Years. He was my Clerk.

Att. Gen. Look upon that Paper. Do you take it to be his Hand? [*Shewing the Scheme.*]

Doyley. If you ask me as to my Belief, I believe it is.

Att. Gen. Have you seen him write since he left your Service?

Doyley. I have had several Letters from him since he was my Clerk.

Prisoner. Have you seen me write any Thing since I was your Clerk, that is these fourteen Years, unless it was my Name?

Doyley. I can't particularly recollect, whether I have, or no.

L. C. Justice. How long is it since you receiv'd any Letters from him?

Doyley. About five Years ago he was my Client, and wrote to me about Business.

L. C. Justice. Did he pay you for that Business?

Doyley. Yes; very honourably.

Prisoner. Have you compared that Paper you say you believe to be my Hand with those Letters?

Doyley. Yes; I have.

Prisoner. Is that what you found your Belief upon?

Doyley.

Doyley. That is what I chiefly found my Belief upon.

Prisoner. I wish you had brought those Letters into Court.

Doyley. If you had desired it, I would have brought them.

Prisoner. I desired it! I little thought to have seen you here on such an Occasion.

Sol. Gen. I think, you say you have seen him write several Times.

Doyley. I do not remember I have seen him write these fourteen Years. He was my Clerk but two Years: He had been Clerk with Mr. — before.

Sol. Gen. Then he had been used to Business before he came to you, and had formed his Hand.

L. C. Justice. Was the Character of those Letters that you received five Years ago agreeable to the Characters that he writ when he was your Clerk?

Doyley. Yes, my Lord.

L. C. Justice. Then I ask you upon the whole Matter, whether you believe it to be his Hand-Writing?

Doyley. Yes; I do believe it to be his Hand.

Prisoner. Since my unhappy Circumstances, have you had no Promise of being restored to your Place again? or the Promise of some other Office or Place?

Doyley. No; I never, to my Knowledge, have seen one Man that had the Power to put me in my Place again; nor ever conversed with any one great Man upon that, or any such Affair.

[*Mr. Delafaye, Clerk of the Council, sworn.*]

Serj. Pengelly. Sir, was that Paper [*the Scheme*] Vol. vi. p. 1763 shewn the Prisoner at the Bar?

Mr. Delafaye. When he was before the Lords of the Council, I was not near enough to see what was upon the Table. But upon a Question that was asked him, relating to some Arms, if he knew where any Arms were lodged in such a Place? he said, No: Upon which one of the Lords of the Council held up a Paper; it might be this, for ought I know, and said, Here is your own Pa-

per, your own Hand-Writing ; which says, *Arms that are there lodged* ; says he, *I should have wrote Arms that should be there lodged.*

L. C. Justice. Whether is that the Paper, or no ? and did he own that Paper that was then shewn to be his ?

Mr. Delafaye. The Question was not ask'd, *Is this your Paper and your Hand-Writing ?* But it was shewn to him as such ; and he said, *I should have wrote, Arms that should be there lodged.*

[*Mr. Stanyan, another Clerk of the Council, sworn.*]

Mr. Stanyan. Upon the Question that was ask'd him about the Arms, this Paper was shewn him. I think this is the Paper : I was nearer to the Table than *Mr. Delafaye*, and did observe this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was shewn him ; and the Question asked him at that Time, was, *what he knew of any Arms that were lodg'd in Westminster ?* He said, *he knew of none* : Then this Paper was shewn him, and a Question asked him : Here the Arms are said to be lodged in this Scheme of your Hand-Writing, how came you to write so, if there be no Arms lodged ? *Mr. Layer* said, it was a Mistake. It was not intended Arms that are there lodged, but Arms that should be there lodged.

Mr. Kettlebey. Was the Question asked, Whether that Paper was his Hand-Writing, or no ?

Mr. Stanyan. No ; I believe not. He did not expressly own it to be his Hand-Writing ; but it was taken for granted, it was so ; and he made no Offer to deny it.

Prisoner. When I was asked why I did say *Arms that are lodged* : *Why*, says I, my Lords, *I know of no Arms.* If that was my Paper, and I had wrote it, I should have wrote, *Arms that should be lodged.*

Att. Gen. We pray the Papers may be read.

Objection that
Similitude of
Hands is no E-
vidence.

Mr. Hungerford. My Lord, we hope these Papers shall not be read ; for the Evidence for the King hath not brought them home to the Prisoner. There is no legal Proof that the Papers are of his Hand-Writing ; and consequently he cannot be affected by any Thing that is in them. As to what
is

is said of the Likeness of Hands, that, we hope, is no Evidence at all. The first Witness, Mr. *Doyley*, said it was like his Hand; but he gives that Opinion of his on the Knowledge he had of the Prisoner's Hand fourteen Years ago, and by some Letters he received from him about five Years since: Mens Hands may vary even in five, much more in fourteen Years. In my Lady *Carr's* Case, Likeness of Hands was not allowed to be Evidence; and yet that was not a Capital Case, it was a Misdemeanor only, it was Perjury: But there is an Authority beyond all that, we have the Act of Parliament for the Reversal of the Attainder of Colonel *Sidney*, who had been convicted upon Evidence given of the Similitude of Hands, and that a much stronger Proof than appears here; for *Cook* and *Cary*, two famous Goldsmiths, swore they believed the treasonable Libel laid to Colonel *Sidney* to be wrote by him; and assigned that for a Reason of their Belief, that they had several Bills from him of the like Hand-Writing, which they constantly paid; nay, one of the Witnesses swore (as I remember) that he saw the Colonel write a Receipt. Other Cases might be quoted; but we depend upon the Authority of the Lady *Carr's* Case, and the Act for reversing the Attainder of Colonel *Sidney*; for in that Act the Reason assigned for reversing the Attainder, is, That the Conviction and Attainder was founded upon a Similitude of Hands. In Consequence of this Act, Similitude of Hands is never to be given in Evidence in a Criminal Case; therefore, we hope, that this Paper is not so proved, as to be read in any Court. It is not proved to be his Hand by any that ever saw him write; neither hath any body heard him own it to be his.

Mr. *Kettlebey*. My Lord, I hope for the sake of Evidence, the sacred and eternal Rule of Evidence, that Similitude of Hands shall not go for Proof, where a Person is charg'd with a capital Offence. Mr. *Doyley* says, That he chiefly founded his Opinion (that it was the Prisoner's Hand-Writing) on comparing it with the Letters he receiv'd from him: And if Comparison of Hands was to be Evidence, surely this would not do, unless he produc'd those Papers, on which he owns he founded his Opinion. Shall a Man be believ'd out of his

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Life, because the Witness saw him write fifteen Years ago, and receiv'd Letters from him five Years ago? Is any Thing more changeable than a Man's Hand-Writing? Can any Gentleman take upon him to say what is, or is not his Hand-Writing after so great a Length of Time; and would not the different Subjects, the one a common Letter of Business, and the other a treasonable Scheme, make a sensible Variation, even in a Man's usual Character?

The two next Witnesses, Mr. *Delafaye* and Mr. *Stanyan*, are Gentlemen of Honour, and would not strain a Point upon any Account whatsoever. Mr. *Delafaye* does not know whether that Paper was upon the Table when the Prisoner was examin'd; and Mr. *Stanyan* takes the Paper now produc'd, to be the same Paper that was upon the Table before the Lords of the Council, because Mr. *Layer* said, *I should have wrote Arms that should be lodg'd*; but Mr. *Stanyan* owns, he never was ask'd the Question, whether it was his Hand-Writing, or no. The natural Sense of the Prisoner's Words, as prov'd, is no more than this: *If I had writ it, I should rather have wrote Arms that should be lodg'd*. Your Lordships are now to lay down a perpetual Rule of Evidence. If Comparison of Hands in this Case be allow'd as Evidence, the same Rule must for ever hold in all parallel Cases; and God knows what may be the Consequence of such a Resolution, or who may be affected by it.

Serj. *Pengelly*. We hope, notwithstanding what hath been objected, we are proper to have this Paper read: Though they have mention'd some Cases to maintain their Objection, yet the later Authorities, and the constant Course of Evidence, as we think, are directly with us. In the Case of my Lord *Preston*, the Indictment was for his adhering to the King's Enemies; and amongst other Overt-Acts alledg'd, one was his carrying several Papers of Instructions, to inform the *French King* how to attack the Kingdom. Mr. *Warre*, who had been an Under-Secretary to my Lord *Preston*, swore, he believ'd some of these Papers to be like my Lord *Preston's* Hand; and they were read by the Opinion of the whole Court. Here supposing no Use is made of the Evidence of Mr. *Doyley*, when this Paper was shewn to Mr.

Layer

*L*ayer before the Lords of the Council, and was mention'd as a Paper of his own Writing, and he is ask'd how he came to write *Arms that are said there to be lodg'd*, his Answer is, *I should have wrote Arms that should be there lodg'd*. Doth not this amount to an Evidence of his confessing it to be his own writing?

Att. Gen. My Lord, I beg leave to observe first, that it hath been prov'd that this Paper was found among the Papers which the Prisoner deliver'd to Mrs. *Mason* to be kept for him; and if that were all, this Paper must be read. The Lord *Preston's* Case is direct in Point, and so determin'd by six Judges, that Papers found in the Possession of the Prisoner may be read without further Proof. But we insist, that the Paper is legally and regularly prov'd to be his Writing, by the Evidence of Mr. *Doyley*, and his own Confession. As to the Lady *Carr's* Case, mention'd by his Counsel, she was indicted for Perjury, supposed to be committed in an Answer, sworn by her before a Master in *Chancery*. What is here said about a Letter, does not appear to relate to the Case there; and if any Judge did lay down such a Position as has been mention'd, the Meaning must be, that an Answer on Oath shall not be falsified by a Letter only under the Parties Hand. And as to Colonel *Sidney's* Case, a Writing was found in his Study, being a general Treatise of Doctrines and Positions, very distasteful to the Government, writ in Answer to a Book formerly publish'd. It was not a Scheme for raising a Rebellion, or design'd for any Thing appear'd to go out of his own Closet, and for this he was indicted of High-Treason. It was generally thought extremely hard to make his having by him such a general Tract, writ in Answer to a particular Book, and kept private in his Closet, an Overt-Act of Treason; no Wonder then that the Parliament resent'd this Proceeding, and revers'd his Attainder. The Reasons recited in the Act as Inducements for this Reversal, are accumulative; and the Stress is not laid only upon the Proof of this Paper: The Act recites, That Colonel *Sidney*, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen Vol. vi. p. 179. for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him, there

being produc'd a Paper found in his Closet, supposed to be his Hand-Writing, which was not prov'd by any one Witness to be written by him; but the Jury were directed to believe it, by comparing it with other Writings of his. And besides that Paper so produc'd, there was but one Witness to prove any Matter against him; and by a partial and unjust Construction of the Statutes of Treasons, was unjustly attainted; and then the Act reverses the Attainder. Here the Prisoner's is not only prov'd by one who saw him write, but if the Question proposed to the Prisoner by the Lords of the Council, and his Answer are considered, it amounts to a plain Confession of it; and therefore we insist, we have given sufficient Evidence for the Reading of this Paper.

The Prisoner's
Objection over-
ruled.

L. C. Justice. It is prov'd that these Papers were in Mr. Layer's Possession, and deliver'd by him to Mrs. Mason, seal'd up; and if no other Evidence had been given, the Papers ought to be read. Can any Thing in the World be an Authority more express than that of my Lord Preston, where all the Papers that were in his Custody were read, without any Offer of Proof that they were his Hand? But this goes further, and is prov'd to be a Paper written with his own Hand; and this is confirm'd by his own Confession. But if it had been an independent Evidence, it is an Evidence sufficient to have this Paper read.

In the Lady Carr's Case, when she had sworn the Letter was not her Hand, in an Answer in Chancery, they come to prove it by a Witness, that says, he believes it to be her Hand. Upon this the Court determines, that this Evidence could be of no Consequence, to falsify any Matter which she had declared upon her Oath; and this was certainly right, but not at all parallel to the Case in Question. Here, if the Proof of his Hand had been out of the Case, it must be read as a Paper in his Custody, and taken from one with whom he had deposited it beyond Contradiction. In the Case of my Lord Preston, and in a thousand Cases it hath been so, and never was denied. Upon the Whole, never was any Thing clearer, than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-Writing.

Fol. vi. p. 28a.

The

[The Scheme was read.]

Au défaut de la force il faut employer la ruse.

I. Let the General, and only one Officer of Note in the Camp agree upon a Day of Execution. The Scheme for the Insurrection read.

II. Let the Officer that Day put himself on the Tower Guard.

III. As there are eight Serjeants, viz. three of the first Regiment of Foot Guards, three of the second, and two of the third, early in the Morn, let the Officer see a single Person, namely, *George Wilson*, who manages these Serjeants, and give him Directions to bring them all to a convenient Place at Four that Afternoon.

IV. Then the Officer must give each Serjeant Money sufficient for the Purpose, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready,) to go singly out of the Camp, and meet together at Church-Yard, exactly half an Hour past Eight in the Evening; when and where another Officer that they know must meet 'em, and take the Command, give 'em Muskets ready loaded, and march with them in a Body to the Tower Gate at Nine that Night exactly.

V. Our Friend, the Officer within, must precisely at the Hour of Nine be on the Guard at the Tower Gate, and seeing this Body of Men appear, order the Garrison to let them in as a Recruit sent to the Tower Guard.

VI. As soon as ever they have enter'd, to seize the Arms at the Tower Gate, shut the Gate up, and secure every one in the Tower that the Officer on Guard gives them Orders to secure; but not to shed any Blood.

VII. The Tower being thus seiz'd, to leave only a small Guard there under that Officer who lets them in, and then with all those that join you, march directly to the Exchange, where the great Doors must be ready opened, and the General there in Person.

VIII. At the exact Hour of Nine, that the Tower shall be thus seiz'd, the Persons of some great Men

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to be arrested at their Houses, brought directly into the City, and delivered to the General.

IX. That upon our meeting at the Exchange the annexed Proclamation to be spread about, the Gates of the City to be shut up, and Pieces of Cannon brought down against them; but every Man that desires to enter the Gates before any regular Force appear, to be admitted to come in; and after the General has appointed a Guard at each Gate and Inlets of the City, with proper Officers to command there, let him march back to *Tower-Hill* for a Place of General Rendezvous, under the Cannon of the *Tower*, and order the Lord Mayor a good Guard to watch over the Bank; but first take Money from thence to the *Tower*, in order to pay the Men.

Vol. vi. p. 287.

X. The Artillery in the Camp to be seized.

XI. The King to be secured and sent to the *Tower*.

XII. Horse-Officers their Friends in the Camp to march into the City.

XIII. Four Half-Pay Captains to command each a Party; one in *Southwark*, the second in the *Privy-Garden*, the third in *St. James's-Park*, the fourth in *Tuttle Fields*.

XIX. A Captain to lead the Watermen.

XX. Orders to be sent to their Adherents in the Country to rise.

XXI. An Officer to go to *Richmond* to seize Prince *Pretty-Man*.

Att. Gen. My Lord, we apprehend that this confirms what both the Witnesses have sworn.

Serj. Pengelly. We shall now produce some Receipts subscrib'd, *James R.* that were likewise among those Papers.

[*Clerk of the Court reads one of them.*]

Vol. vi. p. 282. I Acknowledge to have received from
the Sum of _____ which Sum I pro-
mise to repay with an Interest for it, at the Rate
of _____ per Annu.

James R.

L. C. Justice. These are not read as proved to be his Hand; but as Papers found on him.

Clerk

Clerk of the Court. Here are ten of them that are the same.

Serj. Pengelly. Mr. *Stanyan*, Do you remember whether any Questions were asked him with Relation to these Receipts?

Mr. *Stanyan*. Upon the Lords asking Mr. *Layer* the Meaning of these Receipts sign'd by the Pretender, and what Use he made of them, he said, That during the Time he was at *Rome*, he had settled a Correspondence with Sir *William Ellis*; and sometime afterwards he writ to Sir *William Ellis*, according to the Directions he gave him; and he told him, if he could send any Receipts, sign'd by his Majesty, or the King, as he call'd him, he thought Money might be rais'd upon them for carrying on the Cause.

Mr. *Kettlebey*. You say he owned he had them from Sir *William Ellis*, having settled a Correspondence with him, that Money might be rais'd by these to carry on his Cause. He told you he had Business to do for Sir *William Ellis*.

Mr. *Stanyan*. No; I know nothing of Sir *William Ellis*'s Business; but that he had appointed to correspond with Sir *William Ellis*, and gave him Directions how to direct to him; and he acknowledged to have received a Letter or Letters from Sir *William Ellis*, in the Name of *Jones*; and that he writ him an Answer to them.

Mr. *Kettlebey*. Are you sure as to those Words? or only to the Purport of them?

Mr. *Stanyan*. I think they are very near the Words; but I am sure they are the Purport of them.

Mr. *Kettlebey*. Was it reduced into Writing?

Mr. *Stanyan*. Yes; it was. The Lords sent Vol. vi. p. 283.
me to assist Mr. *Delafaye* upon Mr. *Layer*'s being examined. Mr. *Delafaye* took the Heads of the Questions propounded, and I sat near the Table, looked over Mr. *Delafaye*, attended to the Questions and Answers; so that we could set one another right when we came to consider them.

Mr. *Kettlebey*. Do you believe Mr. *Layer* knew you was taking his Confession at that Time?

Mr. *Stanyan*. I think it can't be otherwise. The Lords spoke thus: *Pray take Notice*; and then, *Take down such a Thing, and such a Thing*; and I be-

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I believe Mr. *Layer* heard them say, *Take down that ; and take down that.*

Mr. *Hungerford.* Was you in the Room when Mr. *Layer* came in first ?

Mr. *Stanyan.* I was ; I called in Mr. *Layer* by the Lords Order.

Mr. *Hungerford.* Was it ever read to him ?

Mr. *Stanyan.* No.

Mr. *Hungerford.* Was it drawn up in Form, so that you might call it an Examination ?

Mr. *Stanyan.* It was the Minutes of an Examination to be drawn out in Form ; but the Lords not finding Mr. *Layer* so candid and ingenious as they thought he would have been, did not ask him to sign it, and we only make Use of it to refresh our Memories.

Sol. Gen. When the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Prisoner so near that in your Apprehension he might hear their Lordships give such Directions ?

Mr. *Stanyan.* Yes ; he was.

Mr. *Hungerford.* Sure they are not contending, that any Confession shall affect a Man unless it was read to him, and it ought to be signed by him : The Man is no way answerable for any Thing taken in Writing without his Consent or Privity in a Criminal Case. It is called Minutes of an Examination, which they might enlarge as they please ; therefore we humbly submit it to your Lordship, whether it ought to be offered in Evidence at all as a Confession ?

Mr. *Kettlebey.* A Confession to a Justice of Peace in Cases of Felony, unless read to the Party, and sign'd by him, must not be given in Evidence.

L. C. Justice. Your Objections would prevail if they were going to read a Confession as Evidence which was neither read to him, nor sign'd by him : But if there is no Examination reduced to Writing, and signed by the Party, the Witness is at Liberty to give an Account of what was said, and he may look on his Notes to refresh his Memory, though this is not so great an Evidence, of so great Weight as an Examination taken and signed by the Party, there being some Room left to suppose the Evidence may be mistaken : But this is practised every Day at the *Old-Baily*, if a Person confesseth, and it be not in Writing, they prove his Confession *Viva Voce.*

Mr.

Mr. Delafaye.

Serj. *Cheeshire*. Pray give an Account what Mr. *Layer* declared before the Lords of the Council concerning these Receipts.

Mr. *Delafaye*. He told the Lords, That he did write to Sir *William Ellis*, that he would send over some Blank Receipts under the King's Hand, that might be made use of for the carrying on his Cause; that he did receive such Receipts, and his Intention was to have tried his Friends, and to have raised Money on those Receipts; and that they had a Precedent for it a little before the Restauration of King *Charles II.* a Method of this Kind had been used.

Att. Gen. We shall proceed to read the Letters that passed between Sir *William Ellis* and Mr. *Layer*, and lay before you the Cyphers made use of to explain several Cant Words and Expressions. Vol. vi. p. 384.

[Clerk of the Court reads.]

This Letter is sign'd *Eustace Jones*.

Dear Sir,

I Received with a great deal of Pleasure and Satisfaction a Letter of the 24th of November, from my worthy Friend with an Account of his safe Arrival, of which I was in some Doubt before, and in no small Pain on that Account. I easily conceive he must have had a great deal of Business on his Return, as well of his Uncles, as of his own; and therefore don't think much that I heard no sooner from him, believing he was much better employ'd; and that Business is to be preferred before Compliment. — I was entirely of Opinion as to the Method of carrying on the Manufactory: The procuring of good Workmen is the first Step to be made; and if he can get such, the rest will be easy; and particularly if he could gain some of the ablest of Mrs. Barbara Smith's. I know it would be very agreeable to all concerned; and particularly to Mr. Atkins, to whom he spoke of Writing, and which I am satisfied will be very acceptable: And if he thinks fit to enclose it to me, I shall convey it safely to his Hands, who I find was very glad to hear of him, counts very much upon his Friendship, and hopes for the Continuance

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tinuance of it. I made his Compliments to Mr. Timothy Watson's Wife, who took them very kindly, and returns hers, with her most humble Service : She and her Charge are very well, God be praised, as are also all Friends here. — He having read over several Times the Paper I shew'd him, and having a good Memory, I don't think it necessary to send a Copy of it. I am, with great Esteem and Respect, ever most entirely,

Dear Sir,

Your most Affectionate most Humble,

And most Obedient Servant,

Jan. 30.

EUSTACE JONES.

For James Fountaine Esq; To be left at Howel's Coffee-House, in Great Wild-Street, London.

Att. Gen. Your Lordship is pleased to remember Mr. *Stanyan* said, That Sir *William Ellis* was to write by the Name of *Jones* ; and in the Cypher Sir *William Ellis* is called *Jones*. You will please to observe also the Expressions in this Letter, *The procuring good Workmen*, and in the Cypher *Soldiers* are meant by *Workmen* : *Manufactory* is not in the Cypher ; but I don't know for what *Manufactory* they wanted *Soldiers* unless to raise a Rebellion. *The ablest of Mrs. Barbara Smith's* : Look for *Army* in the Cypher, and you will find that is signified by *Barbara* ; and Mr. *Atkins* in the Cypher is the Pretender. *Compliments to Mr. Timothy Watson's Wife* : Look on the Cyphers, and *Timotby* stands for *Hughs*, whose Wife is Nurse to the Pretender's Child. This Letter is directed for *James Fountaine Esq;* and Mrs. *Mason* said the Prisoner went by the Name of *Fountaine*. N^o. 10. are fictitious Names, and the Key to them : Read it.

[*Clerk of the Court reads.*]

*Digby — Dillon,
Orery — Burford,
Regent — Steel,*

|| *Tories — Tanners,
Whigs — Waggs,
Rogers — Plunket,*

Att.

Att. Gen. Read Letter, N^o. 40.

[Clerk of Court reads.]

Sign'd N. C. dated July 11. 1722.

Dear Sir,

I Received with all possible Satisfaction your most affectionate Letter of May 8. with its inclosed, which was presently deliver'd to Mr. St. John, who took it extream kindly; but could not well understand what relates to Mr. Burford: He hopes your Answer to what I writ in the Beginning of last Month, may soon clear that. You will have seen, by what I then told you, that the former came safe to his Hands, and the Reason of your not having had a distinct Answer to it. He had the Stockings you sent for him; and returns you many Thanks for them, as also for all other Marks of your Affection and Concern for him and his, and will be ready to shew his Sense thereof on all Occasions. I am in earnest Expectation of hearing soon again from you, and am with all possible Affection and Esteem.

Dear Sir,

Your most Faithful and

Most Humble Servant,

N. C.

For James Fountaine Esq; To be left at Howel's Coffee-House, in Great-Wild-Street, London.

L. C. Justice. Who is that N. C?

Att. Gen. We do not know. Mr. St. John in Vol. vi. p. 285. the Cypher signifies the Pretender.

Mr. Hungerford. Look into the Paper. Pray what do Stockings stand for?

Sol. Gen. Read the Letter N^o 41.

Clerk of the Court. This is dated the 27th of May. It is sign'd by no Body, nor directed to any Body, the cover is off.

Dear Sir,

I Received, with a great deal of Pleasure, the Favour of your most obliging Letter of March 22. with

an inclos'd one for our Friend, who was very glad to hear from you, and is very sensible of, and takes very kindly the Care you take of his little Concerns there; but saith, he doth not sufficiently understand the State you sent, so as to be able to make a particular Answer, till you shall further explain it; there being some Tenants mention'd by you, whose Names he does not find in the Rental, as Burford, Steel, Digby, the little Soldier, and Simmons, the latter he believes should be Simmes: He is of the North, a grey-bair'd antient Man, whom he very well remembers, and has a particular Esteem and Value for, as a very good Tenant, and a very honest Man.—All Friends here are in perfect Health, God be thanked, and remember themselves kindly to you, and I am most entirely

Yours, &c.

Sol. Gen. You will find that *Rental* stands as a fictitious Name for the Cypher itself, and *Simmons* in the large Cypher for the Lord *North and Grey*.

L. C. Justice. What Use do you make of these Letters?

Sol. Gen. The Use we make of them is, to shew that Mr. *Layer*, who took on him the sham Name of *Fountaine*, by which some of these Letters are address'd, had a Correspondence with the Friends of the Pretender at *Rome*; that this Correspondence related to a Conspiracy, which was form'd and carrying on here; and it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Att. Gen. They shew that the Agents of the Pretender at *Rome*, had laid designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given, of the Prisoner's Endeavours to get Soldiers and Serjeants out of the Army.

Serj. Cheshire. It may not be improper to lay before you, the Lists of several Persons names that are in the Army.

Clerk of the Court reads. A List of Officers Names, with Marks and Numbers to some of them.

Att. Gen. We have hinted already, that there are the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting

ing how he might get an Account of the Number of the Forces; as how many Colonels, how many Captains, and how many Soldiers there were in the Guards, and other Troops of his Majesty.

[Here several Lists were read of the Officers of the Guards; of the Number of Men and Horses under their Command; of the great Officers of the Tower, &c.]

Serj. Pengelly. We desire to ask Mr. Delafaye and Mr. Stanyan, Whether, at the Examination of Mr. Layer, any Thing was said of Mr. Layer's being at Rome?

Mr. Hungerford. Mr. Layer's being at Rome, Vol. vi. p. 286. and corresponding with the Pretender (if he did so) is made Treason by another Act of Parliament, and not by this on which he is indicted; and therefore Evidence of his being at Rome, and corresponding with the Pretender, cannot be offer'd as an Evidence of High Treason upon this Indictment.

Serj. Pengelly. It is only to shew the Probability of receiving those Receipts.

Sol. Gen. Notwithstanding the Objection which is made, that we are attempting to give Evidence of another kind of Treason not alledg'd in the Indictment, yet we insist upon it, that it is proper here as circumstantial Evidence of the Treason which is alledg'd. It has been held ever since the Statute of 7 Will. III. That Acts of High Treason, not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of some Overt-Act, which is there laid.

Mr. Hungerford. They may as well offer Evidence against him for counterfeiting the Great-Seal, or Clipping and Coining, for the sake of Evidence; and we humbly hope, they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at Rome: Let them consent to have him acquitted upon this Indictment, and then let him be prosecuted on the Act for Corresponding with the Pretender, and see what they will make of it. Vol. vi. p. 287.

L. C. Justice. Sure as this Evidence is offer'd, it is very proper. The Treasons laid in this Indictment

ment are, a Design to depose the King, and set the Pretender on the Throne, &c. and it is not proper to shew for this Purpose, That this Gentleman corresponded with *Rome*, was with the Pretender, and these Letters sent from Sir *William Ellis* to him: Letters, according to his own Desire, purporting Receipts for Money to be sign'd by the Pretender, as a Foundation to oblige him to make Repayment; and after these Things have been offer'd, is it not proper to go as far as they can upon this Head, and shew how far he hath been engaged with the Pretender and his Accomplices?— Don't trouble yourself, no Use shall be made of that to charge you with the Treason, made so by another Act of Parliament about Corresponding with the Pretender.

Mr. *Reeve*. Mr. *Stanyan*, Pray go on, and give an Account of what he confess'd, when examin'd before the Lords of the Council, about his being at *Rome*.

Mr. *Kettlebey*. Mr. *Stanyan* said he had taken Minutes of his Examination: I had rather see the Minutes than trust to his Memory. In the Trial of the two Bailiffs in this Court, the Substance of what the Deceased said was reduc'd into Writing, and therefore the Parole Evidence, that was offer'd to be given, was rejected; and whether the Rule is not the same in greater Cases? Therefore we hope he shall produce those Notes, now he is going to give a further Account of his Examination.

Mr. *Hungerford*. I was Counsel in that Case: The Justice of Peace who had taken Mr. *Lutterel's* Examination, did not appear, and that Examination could not be had: There was a Copy of it taken and produc'd, and proved in Court to be a true Copy, but your Lordship would not suffer that Copy to be read, or the Subject-Matter of it to be given in Evidence, unless the original Examination itself was produc'd.

L. C. Justice. Mr. Attorney, Do you oppose producing the Minutes?

Vol. vi. p. 288.

Serj. *Pengelly*. There may be a great many Things that are not material to the present Case: Why should they have all these Minutes read? It is not for the sake of the Prisoner, but for the sake of some other People, who may be listning here.— In the Case of *Lutterel*, there was a compleat Examination

mination taken by a Justice of Peace: In this Case, there is no Examination compleated and drawn up; it is nothing but an Oral Confession, and amounts to no more.

Att. Gen. Their desiring to have these Minutes read, is not so much for the sake of their Client, as for the sake of other People.

L. C. Justice. Without Mr. Attorney's Consent, we are of Opinion they cannot be read: He intimates that it might be a Disservice to the King to have these Things disclos'd; you cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discovered to the World.

Mr. *Hungerford*. Something dropp'd as if we did insist upon this Matter for the sake of others: They are mistaken; we condemn such an Insinuation: We are of Counsel for this Man singly.

Serj. *Pengelly*. Mr. *Stanyan*, please to recollect what was said by Mr. *Layer* relating to the Declaration: Was any Questions ask'd relating to the Persons who had seen it?

Mr. *Stanyan*. He said, the only Persons that had seen it, were one *Wilson*, *William Jeffereys* a Non-juring Parson, and one *Lynch*.

Serj. *Pengelly*. Where did he mention to have shew'd it *Lynch*?

Mr. *Stanyan*. On his Way to my Lord *North and Grey's*, at the *Green-Man* at *Epping*.

Serj. *Pengelly*. Was there any Thing more said by *Layer*, relating to that Journey to *Epping*?

Mr. *Stanyan*. He said, he went to my Lord *North and Grey's*, and dined at the *Green-Man* as he went; then he carried Mr. *Lynch* to my Lord *North and Grey's*, and recommended him to my Lord *North and Grey* as a proper Person to be employ'd; I think it was employ'd in an Insurrection, or in any Thing else that his Lordship should command him.

Mr. *Kettleboy*. If he is not certain, I desire he may produce his Minutes, as he gives his Evidence *viva voce*, to refresh his Memory.

Att. Gen. We submit to it.

L. C. Justice. It is always so.

Mr. *Stanyan*. He recommended him as a proper Person to be employed in an Insurrection; and that *Lynch* having told *Layer* before that he would

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seize the Earl of *Cadogan*, that *Layer* did mention him to my Lord *North and Grey* as a proper Person for such an Attempt.

Mr. *Kettlebey*. The first Time you said in an Insurrection, as you remember'd or thought; how came you to be more certain on the second Repetition of your Evidence than at the first?

Mr. *Stanyan*. I have recollected the Words; and Mr. *Layer* used those Words.

Mr. *Hungerford*. Did you give your Evidence, that you was certain he said that he had recommended *Lynch* as a proper Person to be concerned in an Insurrection in general, or only as a proper Person to seize my Lord *Cadogan*, or both? how did he express himself?

Mr. *Stanyan*. I will tell you how the Words were: *Lynch* having told him he would seize my Lord *Cadogan*, *Layer* recommends *Lynch* to my Lord *North and Grey* as a proper Person for such an Attempt.

Mr. *Hungerford*. Then the Insurrection was out of the Case; he was only recommended to my Lord *North and Grey* as a proper Person to seize my Lord *Cadogan*.

Vol. vi. p. 289.

Mr. *Kettlebey*. I think you have repeated it three Times, and different each Time; now please to rectify your Memory, and let us have it so as it may be understood.

Mr. *Hungerford*. Pray give an Account once for all how that Matter was.

Mr. *Stanyan*. I can give you no other Account.

Mr. *Kettlebey*. He hath varied every Time: I appeal to Mr. *Attorney*, I appeal to your Lordship; surely this serves to make our Objection so much the stronger, against allowing parole Evidence of a Confession that was put in Writing.

Att. Gen. I can't imagine what they mean: Here is a Gentleman that gives an Account that the Prisoner confess'd that he recommended *Lynch* to my Lord *North and Grey* as a proper Person to be employed in the Insurrection, and to seize my Lord *Cadogan*; where is the Variation in this?

Sol. Gen. Did Mr. *Layer* declare any Thing further?

Mr. *Stanyan*. He said my Lord *North and Grey* received him civilly; he supped there, and lay there that

that Night, and they dined there the next Day; and, either at Dinner, or afterwards, several Healths were drank, which were begun by my Lord *North and Grey*; that after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife, and the young Prince's.

Att. Gen. Mr. *Delafaye*, pray give an Account what Mr. *Layer* said, when he was examin'd before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye*. Mr. *Layer* declared to the Lords Vol. vi. p. 494 of the Council, that he had been at *Rome*; that he had had two Conferences with the Pretender; that he acquainted him with the Disaffection of the Nation, with Respect to the Losses that had been sustained by the *South-Sea*. He said in general, the Nation was well affected to him; and that he knew Persons of Estate, not Quality, that were in his Interest. Then he proposed to have Credentials or Tokens of the Pretender's Regard to him; which was not granted him. Then he desired the Pretender's Spouse should stand Godmother to his Child. The Pretender said, he would consider of it; and Colonel *Hay* brought Mr. *Layer* Word that she consented; and it was agreed, the Dutches of *Ormond* should represent her. And *Layer* desired to know who should stand Godfather. To which it was answered, the King himself, meaning the Pretender. *Layer* then desired to know who should represent him; and it was said, *Layer* might find one, when he came to *England*, proper for the Purpose. That when he came to *England* he went to Mr. *Thompson*, to advise with him about it; who went to my Lord *Orrery*, to desire him to stand as Proxy for the Pretender. My Lord *Orrery* declined it; then he went to my Lord *North and Grey*, who accepted it. The Child was christened at *Chelsea*, at a House, I take it, where there was a China-Shop. It was in the Spring of the Year; and he said, there was his Wife, my Lord *North and Grey*, who stood for the Pretender, and the Dutches of *Ormond*, who stood for the Pretender's Wife.

[Mr. Stanyan gave the same Evidence of his Confession before the Council.]

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Serj. *Pengelly*. What did he say of his recommending Mr. *Lynch* at his Examination?

Mr. *Delafaye*. He spoke of recommending *Lynch* twice; that Mr. *Lynch* having told him he would seize my Lord *Cadogan*, he did recommend him to my Lord *North and Grey* as a proper Person for that Attempt. The second Time he recommended him, he had proposed carrying *Lynch* to my Lord *North and Grey's*, he having told him, that he was a very honest Man, fit to be concerned in an Insurrection; that *Laver* having told *Lynch*, his Lordship was to be at the Head of the Design, *Lynch* was impatient to wait upon him.

Att. Gen. Pray Mr. *Stanyan* give an Account what Arms were found in Mr. *Laver's* House.

Mr. *Stanyan*. Just after Mr. *Laver* was seized, I came in; he was just got out of his Bed; I observed in the Room where he lay, a Pair of Pistols hung by his Bed-Side, and between them a Horseman's Sword, a Riding-Sword, a pretty large Sword: On the other Side of the Bed next the Chimney, a little Case of Pistols, and another Sword hung in another Part of the Room: In the Closet of the same Room I saw two Carbines or Guns, and two Musketoons or Blunderbusses. Seeing so many Arms, I went to handle some of them. Upon which he said, have a Care, they are loaded; do not meddle with them. Upon that I ask'd him, what he had to do with so many Arms? He answered, you must know, my Clerk and I are great Shooters when we are in the Country. In another Room, looking farther, we observed several Molds for the making of Bullets. There was also a Cartridge-Box, and a Number of Cartridges ready made up, as near as I can guess, about forty or fifty. There was a Gentleman of the Army, and he said, they were such Cartridges as were us'd in the Army.

Att. Gen. Was there any Thing said relating to these Arms before the Lords of the Council?

Mr. *Stanyan*. The Lords asked Mr. *Laver* what he did with forty or fifty Cartridges made up: He said, They were made up by *Bowers* the Gun-Smith; and that if there was any Disturbance in the Nation, he should have Occasion for them.

Colonel

[Colonel Huske sworn.]

Att. Gen. Was you by when these Arms were seized in Mr. *Laver's* House? Vol. vi. p. 291.

Col. Huske. Yes; there were two Cases of Pistols, two Fuzees, some other Arms, and a Blunderbuss, and two or three Swords, and above forty Cartridges made up as usual, when our Soldiers charge their Pieces for Expedition in Case of Action; and there was a Mould for Musket-Bullets.

Prisoner. Would those Cartridges that were made up go into a Fuzee?

Col. Huske. These very Cartridges are only fit for the Army.

Mr. Kettlebey. Would these Cartridges go into a Fuzee?

Col. Huske. I did not try them; I do not know.

Mr. Kettlebey. According to my Notions, there is a Difference in Bigness between a Fuzee and a Musket; and a Cartridge fit for a Musket will not go into a Fuzee.

Col. Huske. A Cartridge that is fit for a Fuzee will go into a Musket.

Mr. Kettlebey. And so it will into a Cannon: But I ask you, whether a Cartridge fitted to a Musket, and proper for the Use of a Soldier going to Battle, will fit a Fuzee?

L. C. Justice. Would these Cartridges have served for the Fuzee?

Col. Huske. I am satisfied they would serve for the Fuzee, and the smallest Arms there, except the Pistols.

Mr. Kettlebey. You say there were two Swords, I believe, you never are without two Swords.

Col. Huske. I believe I have a Dozen; but they belong to my Company.

Mr. Kettlebey. Did you open any of the Cartridges?

Col. Huske. I did; and there was a Ball made up at the End of each Cartridge.

[*Mr. Smeybert sworn.*]

Sol. Gen. Have you seen the Prisoner at Rome?

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Smeybert. Yes ; I saw him there about a Year and a Half ago. He was there a Week or a Fort-night.

[*Mrs. Hay sworn.*]

Serj. Cheshire. Did you ever see the Prisoner? and where?

Mrs. Hay. I saw him at *Rome* last Summer was Twelvemonth.

Att. Gen. We shall now prove the Prisoner's Escape out of the Messengers Hands.

[*Mr. Squire sworn.*]

Att. Gen. Do you know any Thing of the Prisoner's being taken?

Mr. Squire. He was taken the 18th of September last, and was in my Custody ; and the next Day he escaped out of my House at a Sash-Window two Stories high.

Att. Gen. What Account can you give of his being taken again?

Mr. Squire. He had not been gone long before I found he had made his Escape ; and understanding which Way he went, I immediately pursued him, and took him in a Lane going to *St. George's Fields*. He said, he was sorry to see me : I asked him how he could offer to go away from me ; and he said, every body else would have done the same in his Condition ; that nobody could blame him for it ; and that he believ'd my Lord *Carteret* would not blame him.

Prisoner. Did not I ask you to shew me your Warrant?

Mr. Squire. No ; you never ask'd me.

Prisoner. Did I not tell you the Reason I escaped was, because I did not know what Authority you had to detain me?

Fol. vi. p. 292.

Mr. Squire. No ; you did not.

[*James Peterfon sworn.*]

Att. Gen. Do you know any Thing of the Prisoner's Escape?

Peterfon.

Peterfon. Mr. *Layer* was in Custody at my Father's House, in a Room two Pair of Stairs backwards; but I was not at Home when he got away.

[*John Sweet sworn.*]

Att. Gen. Do you remember you ever saw the Prisoner?

Sweet. Yes; I saw him just going into *St. George's-Fields*; and was the first that took him.

Att. Gen. What did he say to you when you took him?

Sweet. He said, for God's Sake let me go; it is an Arrest. Then my Partner came up; and looking about me I saw another Person coming up, who was the Messenger. Whereupon he put his Hand in his Pocket, and pull'd out, I believe, forty Guineas, and said we should take what we would if we would let him go; but we would not.

[*Anthony Stephens sworn.*]

Att. Gen. What did *Layer* say when he was first taken?

Stephens. We ask'd if it was for an Arrest. Yes, says he, it is an Arrest. And when he saw Mr. *Squire's* Son coming after us, he would give us whatever we pleased to let him go; and more than that, he said, he had no Warrant; and he did not know that they could keep him without a Warrant.

Serj. Pengelly. My Lord, we have gone through our Evidence, and shall rest it here.

Mr. Hungerford. I am of Counsel for the Prisoner; and after so long an Evidence, it will best become me to draw the Matter in Debate to a single Point. My Lord, the Prisoner is indicted on the 25th of *Edw. III.* call'd the Statute *de Proditionibus*. The Things declared to be Treason by that Act are, the Compassing or Imagining the Death of the King or Prince, and some other Attempts against the Royal Family; and then declares, likewise, that it is Treason to levy War against the King; not to design or contrive to levy War, but actually to levy War only shall be Treason. The Treason laid to the Prisoner's Charge, is the Compassing and Imagining

The Prisoner's Counsel make their Observations on the King's Evid 1. 3c.

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ning the Death of the King. The Overt-Acts laid to his Charge are, That he did consult and conspire to levy War; That he did publish a certain treasonable Libel, purporting among other Things, a Promise of Reward to his Majesty's Subjects to rise in Arms, and levy War against the King; That he consulted to set the Pretender on the Throne; That he listed Soldiers for him; and lastly, That he consulted to seize and imprison the King.

There is no Evidence of any of these Overt-Acts in *Essex*, unless that of publishing a treasonable Libel, which the King's Counsel would insinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be prov'd in *Middlesex*. But Gentlemen, the Indictment being laid in *Essex*, if an Act of High-Treason is not prov'd to have been committed by the Prisoner in that County, he must be acquitted.

I might here insist, that an actual levying of War, and not *designing* to levy War, being made Treason by the Statute, the publishing a Paper which purports but an *Intention* only to levy War, or raise a Rebellion, is not Treason. This Opinion is warranted by the express Words of the Act itself, and by the Opinions * of the Chief Justices *Coke* and *Hales*; and if this be not the Meaning of the Act, one Paragraph, namely, that which declares actual levying War High Treason, is superfluous; for to what Purpose is the actual levying of War made a distinct Species of Treason, when the *Intention* of doing it was Treason within the first Clause of the Act. This Opinion seems confirm'd also by two Acts of Parliament, one in † Queen *Elizabeth's*, and the other in King *Charles II's* Reign, where consulting or intending to levy War or Rebellion is made High Treason during the Lives of those respective Princes; for which temporary Provision there could be no Reason, if the Law were so before. I only hint this Matter to your Lordship: I know what Determinations the Judges have given upon this Objection of late Years. But I hope there will be no Occasion for an entire Dependence on this Objection,

* *Coke's* Infl. Cap. I. p. 9, & 10. *Hale's* Pleas of the Crown, p. 13.

† 1 *Eliz.* Cap. I. 13 *Car.* II. Cap. I.

tion; for that it will appear to the Court, that no such Overt-Act as is laid in the Indictment, namely, the publishing the Pretender's Declaration at the *Green-Man*, is at all prov'd. Vol. vi. p. 293.

Mr. *Lynch* is the only Evidence of this Matter, who says, That he and the Prisoner met at *Aldgate*, to go to my Lord *North's*; and that finding themselves too late to be there at Dinner, they call'd at the *Green-Man*, and got a Beef-Steak; and before it was brought up, the Prisoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Prisoner, calls the Pretender's Declaration; and Mr. *Lynch* read only one Paragraph in it, where he says, the Soldiers were attempted to be allur'd from his Majesty's Service. This is the whole Evidence given, touching any Offence committed in the County of *Essex*. Now the Time that the Prisoner and Mr. *Lynch* staid at the *Green-Man*, seems to be very short: There is no Evidence that the Horses were put up: The Beef-Steak was bespoke before they went into a Room: Mr. *Lynch* came down twice, and was gaping at some Persons in the Yard that he knew; and yet before the Beef-Steak was brought up, this Declaration is pretended to be publish'd. For my Part, I can't think there could be Time for so solemn an Act as publishing a Declaration to overturn three Kingdoms. But in the second Place, if the Prisoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpose Mr. *Lynch* relates, yet such Paper cannot be imputed to the Prisoner as an Act of High Treason. There was but a few Lines of the Paper read, and the rest were not read at all, neither by Mr. *Lynch* or the Prisoner; and I never knew that Part of a Deed or Writing was ever allow'd to be given in Evidence, without producing the whole. In the Case of my Lord *Russel*, where the Declaration for Rebellion was assign'd as an Act of High-Treason, the whole Declaration was prov'd to be read, and not a Part only; and yet even that Evidence was upon the Revolution look'd upon so imperfect, that for this and other Reasons, the Lord *Russel's* Attainder was revers'd. Can it be said, that the Prisoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, is a publishing of a treasonable Paper, or in Truth, a publishing any Paper at all?

all? Declarations for Rebellion are commonly publish'd in publick Places, to captivate Multitudes: There was no appointed solemn Meeting at the *Green-Man*; no Concourse of People; only a Writing handed from one Man to another while they were expecting a Beef-Steak.

Before the Statute of Treasons, People labour'd under great Uncertainties what was High Treason, and what was not; whereupon, to ease the People of that Perplexity, in 25 *Edw. III.* the Law of Treasons pass'd, for which the Nation paid a great Sum of Money; and that Parliament was call'd, *The Blessed Parliament*. Now if every Act a Man doth, though perhaps tending to Sedition, shall be interpreted an Overt-Act of High-Treason, the Subject will labour under the same Inconveniencies he did before the Statute of Treasons. This Practice may be so far improv'd, that if a Man delivers a seditious Ballad to another to be read, that shall be interpreted an Overt-Act of High Treason; much more if People in their Cups should drink such Healths as were said to be drunk at my Lord *North's*; for *Bibere est agere*, whatever *Scribere* is: This is what occurs to me concerning the Charge of High Treason in the County of *Essex*; and if there be no Charge made out against him there, the Evidence of what he did or said elsewhere goes for nothing.

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Mr. *Kettlebey*. The Charge against the Prisoner is of the highest Nature, no less than Conspiring and Compassing the Death of the King; and as it is an Offence not capable of any Aggravation, or to be alleviated by any Thing that we can offer, we hope your Lordship and the Gentlemen of the Jury will expect the strongest Evidence of it, such as the Law requires, and is in some Measure proportionable to the Greatness of the Offence. My Lord *Coke*, in his *Third Institutes*, Fol. 12. in his Comment on the Act of Treasons, says, The Proof must be direct and manifest, not founded upon conjectural Presumption, or Inference, or Strains of Wit. The late Act of 7 *Will. III.* enacts, That there must be two lawful Witnesses to the same Overt-Act, or one of them to one, and the other of them to another Overt-Act of the same Species of Treason; and that no Evidence shall be given of any Overt-Act not laid in the Indictment. [*Here Mr. Kettlebey*
having

having repeated the Evidence Mr. Hungerford had summ'd up before, of publishing the Declaration at the Green-Man in Essex, goes on.] If the Prisoner had pulled out of his Pocket the most treasonable Paper that ever was invented, is it any more than publishing a Libel? Is that an Overt-Act of Treason? Suppose it a Copy of the Pretender's Declaration, or an Original, such an one as was burnt by the Sheriffs of London two Days ago; if a Man had pull'd that out of his Pocket, and gave it to another to read, is this High Treason? I dare say, if any such Person falls into Mr. Attorney's Hands, he that always does his Duty to the Crown, as he ought, will go no higher than an Information for publishing a Libel. But suppose what pass'd at the Green-Man (which I am very far from admitting) should be adjudg'd an Overt-Act of High Treason, it is prov'd but by one Witness; and the Law requires two in High Treason; and that the Jury should be return'd out of the County where the Facts are laid, because it supposes them more connusant of a Case which rises in their Neighbourhood. But if the Proof of one Overt-Act in the County where 'tis laid by one Witness, should be sufficient to let them in to prove other Overt-Acts in distant Countries, or in foreign Kingdoms, these fundamental Rules of Law would be totally subverted. How is it possible for a Man to provide or defend himself against such an Attack? 'Tis springing a Mine upon him, sudden and unexpected Ruin.—Mr. Attorney won't shew any Precedent where it ever was allow'd to be good, that one Witness might prove the Overt-Act in the County where it was laid, and then they might give Evidence of Overt-Acts committed in any other County. If your Lordship is of Opinion against us in this Particular, then we must beg Leave to go farther, and observe upon the rest of the Witnesses, not only to take off their Credit, but to contradict them in a great Measure.

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L. C. Justice. You must go on. You have mix'd your Discourse so, that no Body knows what to make of it.

Mr. Hungerford. Since it is your Pleasure we should go on, now I shall make some Observations on the rest of the Evidence given against the Prisoner out of the County of Essex, though I depended on the

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the Insufficiency of the Evidence, touching any Act of High Treason being committed in *Essex*, and I hoped that from that very Circumstance the Prisoner would have been acquitted.

The Evidence of the second Witness, *Plunket*, ought to weigh but very little. The Prisoner's meeting with this Man was very accidental in *Lincoln's-Inn-Fields*, when they did not know each other; and yet they immediately enter'd into a Discourse of raising a Rebellion, and overturning two Kingdoms; and that great Secret of knowing who was to be General, was communicated to this eminent Witness *Plunket* at first Interview, though Mr. *Lynch*, after long Acquaintance, could not get it out of the Prisoner. Mention was also made of two very great Men more, namely, the Earl of *Straford* and General *Webb*, as well affected to the Undertaking; but their Services to their Country are too well known to be blemish'd by such an incredible Evidence. After some Discourse, whether the Lutheran Religion was preferable to the Popish, and the Prisoner had communicated to *Plunket* an Intention of invading the Kingdom by some Persons from Abroad, the Prisoner in a very great Fit of Bounty, presents Mr. *Plunket* with the Sum of half a Crown. This Relation seems to be so improbable, and deliver'd (or rather stammer'd out) in so wretched and incoherent a Manner, that I believe no one that heard it, believes a Word of it. The Truth is, the Scheme itself seems rather to be a chimerical Plan of some crazy-pated Politicians, than a solid Project of any Man of Sense. The seizing the General of the Army, the *Tower*, the *Exchange*, the Bank of *England*, and all this with a Force which does not appear to consist of more than three or four Men. And for Money, the Sinews of War, there seems to be no great Stock of that: *Plunket* hath about half a Crown at one Time, and half a Guinea at another. Mr. *Lynch*, indeed, who seems to be a Man of greater Weight, upon his frequent repeating himself to be very uneasy, got about seven or eight Guineas. These Things I mention, Gentlemen of the Jury, to shew how improbable this Part of the Evidence is of itself, and we hope to make it appear more so, by the Evidence we shall produce to the Reputation of the Witnesses. As to the Papers of all

all Kinds produc'd as Evidence against the Prisoner, we hope he cannot be affected by them, none of them being prov'd to be his Hand-Writing. As to the Arms found in his House, they are no more than what Gentlemen usually have for the Defence of their Family, or their Recreations. His being at Rome, it is admitted, is not Evidence against him on this Indictment; and as to his Escape, it is no Evidence of the Prisoner's Guilt. Every Man under Confinement would willingly escape, and be at Liberty: I do not enter into the Consideration, whether the Custody of a Messenger be a legal Prison, or no. Besides, the Prisoner hath already suffer'd for that Offence, if it be one. He hath been put in Irons; and his attempting to escape, is the only Reason that is assign'd for it.

It has been said, in the Introduction to this Charge, That it was a Design, which if it had took Effect, would have engaged the whole Nation in Blood, and have destroy'd our religious and civil Rights. We who are of Counsel for the Prisoner, have as great an Abhorrence of a Thing of that Nature, as any Men can have. But yet we hope Mankind is not to be led away with Shew and Colour, but to be guided by Reason and Matters of Fact. Is it possible that Men could have been rais'd into a Rebellion by a Proclamation which was never publish'd, but by Mr. *Lynch's* reading two or three Lines of it, and which, by his own Evidence, was imperfect? for he says the Prisoner told him he intended to put in the Pretender's Name, which was not then done; and therefore what was produc'd, was, at the utmost, an imperfect Piece only. Is it to be supposed, that the Prisoner at the Bar, a Man of a Gentleman-like Family, indeed, but of no great Figure or Estate in the World, and having no Dependance, or numerous Acquaintance, no Provision of Men, Arms, or Ammunition, should, with the Assistance only of a Bundle of Papers, and Mr. *Lynch* and Mr. *Plunket*, overturn and enslave this whole Kingdom? God be thanked, the Protestant *British* Government is not so easily to be brought to Destruction; they might much sooner (and yet I think that very difficult too) have borrowed an 100,000*l.* of the Bank of *England*, upon the blind Notes they produc'd sent by Sir *William Ellis*, than have brought about

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about a Revolution in this Kingdom with such Materials as they seem possessed of.—[*And he concludes with the Words of the late Lord Chief Justice Scrogg's,*] viz.
 “ If once our Courts of Justice come to be aw’d
 “ or sway’d by vulgar Noise; and if Judges and Ju-
 “ ries should manage themselves so as would best
 “ comply with the Humours of the Times, ’tis falsly
 “ said, That Men are try’d for their Lives or For-
 “ tunes; they live by Chance, and enjoy what they
 “ have as the Wind blows, and with the same Certain-
 “ ty:—Let us pursue the Plot in God’s Name,
 and not baulk any Thing where there is Danger or
 Suspicion upon reasonable Grounds; but not so
 over-do it, as, to shew our Zeal, we will pretend
 to find what there is not, nor stretch one Thing be-
 yond what it will bear to reach another.

Mr. Kettlebey. I cannot but take Notice of one Thing in *Plunket’s* Evidence, which renders it impossible to be true: He gives an Account of a Letter he received about ten Weeks ago, and is very positive as to the Words of the Letter; and yet it appears he can neither write nor read. He says, indeed, it was read over twice to him; and we have heard him repeat it three Times; and I appeal to the Jury, if any one of them can repeat it again with that Exactness the Witness pretends to do.

Is it not equally strange that *Jefferays*, a Man of Letters, should immediately fall into Discourse with him, an ignorant Serjeant, about the Plot, and raising a Rebellion; and the same he says of *James Plunket*, the first Day he came to him. Besides, there is a manifest Contradiction in his Evidence; for at first he says the Nonjuring Parson told him his Name was *Jefferay’s* the first Time he saw him; and afterwards he said the first Time he knew his Name to be so, was upon the Receipt of a Letter to which he subscribed his Name.

We shall give an Account of *Plunket*, *Lynch*, and *Mrs. Mason*, who are the principal Witnesses, that they are of so scandalous and vile a Character, that no Regard at all is to be had to their Testimony.

Mr.

* Lord Chief Justice Scrogg’s Speech the First Day of *Michaelmas* Term, 1679. printed that Year.

Mr. *Hungerford*. We shall call our Witnesses.

[*Mr. Mackreth sworn.*]

Mr. *Hungerford*. Pray give the Court an Account if Mr. *Layer* or Mr. *Lynch* were at your House last Summer. Vol. vi. p. 297.

Mackreth. I never saw Mr. *Layer* before in my Life, as I know of.

[*Mrs. Mackreth sworn.*]

Mr. *Hungerford*. Pray do you remember any Travellers at your House on the 25th of *August* last?

Mrs. *Mackreth*. I never saw the Gentleman in my Life, as I know of.

[*John-Paul Freeman sworn.*]

Mr. *Hungerford*. Do you remember any Thing of this Gentleman's being at your Master's House the 25th of *August* last?

Paul Freeman. To my Knowledge, I never saw him before in my Life.

[*Lord North and Grey sworn.*]

Mr. *Hungerford*. If your Lordship please to give my Lord and the Jury what Account you have of one *Lynch*.

Lord *North and Grey*. My Lord he came twice to my House in *Essex*: The Gentleman was wholly a Stranger to me; and I have never seen him since. I cannot say I know any Thing of him personally. The only Thing I can say, is, what he said of himself. It is a little hard for a Man of Honour to betray Conversation; what pass'd over a Bottle of Wine in Discourse; but since your Lordship requires it, I must submit. — He was represented to me as a Stranger newly come to *England*, and had a Mind to see my House and Gardens: He was brought there accordingly by Mr. *Layer*; and I received him civilly. In Process of Time he told me the History of his Life: That he was not a *Spanish*, but an *Irishman*, and, I think, educated in the Camp under an Uncle of his. He told me, that when he was a young Man he had taken a great many Liberties.

Serj.

Serj. Pengelly. We apprehend this Evidence is not proper to be given. If they have any particular Questions to ask my Lord, as to the Character of Mr. *Lynch* in general, let them propose them; but thus to give an Account (by Way of Repetition of a Discourse between Lord *North and Grey* and Mr. *Lynch*) where he was born and bred, and a History of particular Facts, is what they ought not to do.

Lord North and Grey. I am glad to be interrupted by that worthy Gentleman. I only desire to know to what Points you would be pleased to ask me.

L. C. Justice. Mr. *Hungerford*, you are not to examine to particular Facts to charge the Reputation of any Witness, but only in general to ask what his Character and Reputation is.

Mr. Hungerford. My Lord *North and Grey* is an entire Stranger to him: He was only going to tell you what Account *Lynch* gave of himself.

Mr. Kettlebey. If that noble Lord was going to give any Character of him which he heard from other Persons, it might alter the Case; but surely when the Character he gives him is grounded on what he said himself, that is much stronger than the Hear-say of others; and therefore we hope he shall give it in Evidence.

L. C. Justice. You know, if there be any Objection to him to his general Character, he can answer them; but if Objections are grounded on particular Charges of his being a base, an infamous, and an ill Man, not having any Notice of this, it is impossible to defend himself.—If you will ask my Lord *North and Grey* what general Character he gave of himself, you may.

Mr. Hungerford. If my Brief be true the whole Ten Commandments be broken by him.

L. C. Justice. And so you charge him with the Breach of the Ten Commandments; and he must let it go for Fact, because he cannot have an Opportunity of defending himself.

Mr. Kettlebey. What Character in general did he give of himself to your Lordship?

Lord North and Grey. I don't know how to answer it, as to his giving a general Character of himself. I saw him twice: The first Time, he was brought down by the Gentleman at the Bar; the second

cond. Fine he came he was ill received; and I ordered it should be told him, that in case he designed to stay there, I had no Room to lodge him. As to particular Things, I don't care to speak of them. I should be sorry to say it, when it was said in my Company, and under my Roof.

Mr. Hungerford. We will not press it farther.

Lord North and Grey. I must beg your Lordship's Leave, if the Gentlemen have no farther to say to me, and your Lordship have no farther Commands, that I may return to my Prison.

[George Talbot sworn.]

Mr. Hungerford. What Character hath *Mr. Lynch*?

Talbot. He hath a very bad Character.

Att. Gen. How long have you known him?

Talbot. I have not seen him these six Years: I met with him at the Canaries, when I was coming from thence six Years ago. I know nothing of him since.

Mr. Kettlebey. Have you had a Character of him?

Talbot. The worst I could ever hear of any Person. I know nothing of my self, but what I have heard from others.

[*Mr. Winchman* sworn.]

Mr. Hungerford. Pray give the Court an Account what you know of this *Stephen Lynch*? Vol. vi. p. 292

Winchman. I knew him fourteen Years ago in the Canaries, where he kept an *Irish* Gentleman Company, one *Wilson*. He was then well beloved by every Body. The Gentleman took him into his Company; and afterwards he grew extravagant; and the Gentleman turned him out of his Company.

Mr. Hungerford. Is he accounted an honest Man, or a Knave?

Winchman. I will not trust him for any Thing.

[*James Darcy* sworn.]

Mr. Kettlebey. What is the Character of *Mr. Stephen Lynch*? Is he a Man to be credited?

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Kk

Darcy.

The Trial of Christopher Layer Esq;

Darcy. I don't take it that he is.

Att. Gen. Where did you know him?

Darcy. I first knew him last *Winter* in *London*.

Mr. Hungerford. Is *Mr. Fitz-Gerald* there? My Lord, here is a Complaint that the Witnesses can't be let in.

L. C. Justice. They must be let in.

Sol. Gen. It is the Business of your Solicitor to see that Way is made for the Witnesses.

Mr. Hungerford. It is not the Business of your Witnesses to stop the Passage.

Sol. Gen. They don't stop the Passage.

Mr. Hungerford. No! What is your busy Colonel there [*pointing to Colonel Huske*] a doing?

[*Mr. Blake sworn.*]

Mr. Hungerford. Do you know *Stephen Lynch*? Is he a Person to be believed?

Blake. I believe he is not: I heard a very ill Character of him about six Years ago. I have heard he married two Wives; but I know nothing but by Hearsay.

[*Collins sworn*]

Mr. Hungerford. Give the Court an Account what you know of *Stephen Lynch*?

Collins. I know him by Eye-Sight only. He hath a very infamous Character.

[*Mr. French sworn.*]

Mr. Hungerford. What Character hath *Stephen Lynch*? Is he to be credited?

French. I don't think he is. I have known him six or eight Months.

[*Mr. Kelley and Mr. Blake sworn.*]

Mr. Kettlebey. *Mr. Kelley*, what is the Character of *Stephen Lynch*?

Kelley. I have known him since *April* last: I never heard any give him a Character that was not very vile.

Mr. Kettlebey. *Mr. Blake*, how long have you known *Mr. Lynch*?

Blake. I never had any Acquaintance with him: But I have heard he hath a vile Character.

Mr. Kettlebey. What did he say of *Mr. Layer*?
Blake.

Blake. He said he would hang him.

Mr. Kettlebey. Did he say any Thing about the Vileness of the Plot?

Blake. I heard him say my Circumstances are very poor. I was forc'd to do this : But if I had got off from this Affair : I would fight any Dozen People in *London* to come off from it. Vol. vi. p. 300.

Mr. Hungerford. In the Conversation you had with *Lynch*, was there Talk of any Money he was to have, *Mr. Darcy*?

Darcy. I went to see *Mr. Lynch* on Account of some Money I lent him; and asked him for it, and how he got Money, and several fine Cloaths, which he had. He told me a Lady used to come twice or thrice a Week to visit him; and this Lady was the Mistress or Daughter of one of the Chief Ministers of *England*. He said this Woman —

L. C. Justice. You must not put him in this Way.

[*Terry sworn.*]

Prisoner. Hath *Lynch* the Character of an honest Man?

Terry. He hath the Character of being a loose young Fellow : That's all I know of him.

[*Mr. Hamilton sworn.*]

Prisoner. What Character has *Stephen Lynch*?

Mr. Hamilton. A vile infamous Character; one that will do or swear any Thing.

[*Mr. Thomas Brown sworn.*]

Mr. Kettlebey. What Character hath *Plunket*?

Brown. I have known him these ten Years : He has but an indifferent Character. I don't think him to be believed.

[*Mr. Keating sworn.*]

Mr. Kettlebey. What Character has *Plunket*?

Keating. I did not know him before the Beginning of *July* last : He has a very bad Character; a drunken idle Fellow, always kept Company with other Women.

[*Sir Daniel O-Carrol sworn.*]

Mr. Hungerford. What is *Plunket's* general Character?

Sir D. O-Carrol. A very bad one. I would not take his Evidence to hang a Dog.

Mr. Hungerford. And here he attempts to hang a Protestant.

[*Mr. Thomas Spelman sworn.*]

Mr. Kettlebey. What is *Plunket's* general Character?

Spelman. I never knew any ill done by him: He had a Dispute with *Sir Daniel O-Carrol* about a Horse.

[*Edward Barnwell sworn.*]

Vol vi. p. 301. *Mr. Hungerford.* Do you know *Plunket's* Character? Is he to be believed?

Barnwell. I must tell you that I found him in so many Mistakes about his own Wife, that, by Good, I would not take his Word for a Half-penny.

Mr. Kettlebey. What did *Mr. Plunket* say to you?

Barnwell. He told me *Mr. Layer* gave him Half a Crown, in Kindness; for the Service he had formerly done him, in turning the Officers out of his House.

Mr. Hungerford. This contradicts what *Plunket* says pass'd between him and *Mr. Layer* in *Lincoln's-Inn-Fields*, with respect to the giving him Half a Crown: It seems to be for former Service.

[*Mr. Matthew Philips sworn.*]

Prisoner. What Character hath *Plunket*?

Philips. The Character every Body gives him, is, That he is not to be believed.

[*Alexander Philips sworn.*]

Mr. Kettlebey. How long have you known *Plunket*?

Alex. Philips. About eleven Weeks.

L. C. Justice.

L. C. Justice. I never heard the like: Most of your Witnesses have known him but a little Time, Seven, Eight, Eleven Weeks, &c. It would almost make a Man suspect that some People had been set on Purpose to give an ill Character of these People upon this Occasion.

[Patrick Mahone sworn.]

Mr. Kettlebey. What Character has *Mr. Plunket*?
Mahone. I have known *Mr. Plunket* several Years. He was an idle broken Man, a great Lyar, and not to be believ'd; I have found him to lye backwards and forwards.

[*Mrs. Child* sworn.]

Mr. Kettlebey. Have you had any Discourse lately with *Plunket* the Serjeant?

Mrs. Child. I was with *Mr. Plunket* when he was in the Messenger's Hands; and he ask'd me why my Husband did not come to see him? I said, he is confin'd on your Account. He said he was going to get a Settlement for Life.

Mr. Kettlebey. What was he to get a Settlement for?

Mrs. Child. For what he said of *Mr. Layer*; a Vol vi. p. 302. Story he had told me of my Husband.

L. C. Justice. You have call'd a great many Witnesses, to the Disreputation of *Lynch* and *Plunket*, to say they have generally ill Characters, and are vile infamous Fellows, not to be believed; and there is the Substance of all your Evidence, if you stay here till Morning.

[*Alice Dun* sworn.]

Mr. Kettlebey. What Character hath *Plunket*?

A. Dun. He lived with another Man's Wife; He hath a bad Character, and is not to be believed.

[*John Richmond* sworn.]

Mr. Kettlebey. When did you see *Plunket*? and what Discourse had you with him?

Service, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand: Prove something of that, and these Proofs will be of more Service to you than ten thousand of these Witneſſes.

Prisoner. If I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. Hungerford. It was never proved to be his Seal.

L. C. Juſtice. You are miſtaken. The Woman ſwore it was his Seal; and the Officers ſwore they were under the Seals when they ſeiz'd them: And it is proved now to be his Seal; for the Seal is viſible.

Prisoner. My Lord, it is not my Seal. I deſire Major *Barnwell* may be ask'd as to this Woman's Character.

Maj. Barnwell. She is a vile Woman. She had like to have cheated me of 1500 *l.* She is not to be credited.

[*Mr. Lebatt ſworn.*]

Prisoner. Pray give the Court an Account, whether Mrs *Mason* ought to be credited?

Lebatt. No; ſhe would take away any body's Life for a Farthing.

Mr. Hungerford. We will cloſe our Evidence as to the Character of theſe Witneſſes againſt the *Prisoner* at the Bar. We hope we have proved them to be ſo infamous, as no Jury on Earth will believe them.

Prisoner. I beg Pardon. Here is a mighty Talk of Arms: I am ſo fortunate as to have a Perſon here that will give an Account of them.

[*Mr. Bowers ſworn.*]

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Prisoner. Pray give the Court an Account of a Blunderbuſs, a Fuzee, a Carbine, and Piſtols. Did not you owe me 6 *l.* on a Note under your Hand?

Bowers. About five or ſix Months ago *Mr. Layer* had a Law-Suit for me. I ſold him a Pair of Piſtols, and a little after another Pair: *Mr. Layer* had them for a Debt. He had in his Houſe two Guns, I gave him one of thoſe Guns. There is

another Gun and a Musket which Mr. *Layer* had of me. — He had a Note of mine for 6 l. which I ow'd him. I importuned him to take a Carbine for a Man to ride with, and a Blunderbuss for his House, in order to fet off this Debt; and I brought him them when he was going into the Country. I brought him three Dozen and half of Cartridges: You bid me bring a Dozen and half, or two Dozen; and I brought three Dozen and half to shorten my Debt.

[*Mr. Raynham depos'd, that he was to have another of the Guns, on Condition of his carrying on a Suit of Law.*]

[*Mr. Samuel Steward sworn.*]

Prisoner. Pray give an Account whether, or no, I was not entrusted with Things of great Value of Money, to put out on Mortgages, and what Occasion I might have for a few Arms?

Steward. Yes; to the Value thirty or forty thousand Pounds within these two Years.

Mr. Kettlebey. Look upon the Paper they call the Scheme. Is that his Hand-Writing?

Steward. I have seen him write a thousand Times; and I do not believe it to be his Hand, or like it. You write a short Character; this is a long one.

[*Mr. Bennet, Clerk to Mr. Layer, sworn.*]

Mr. Kettlebey. Have you been acquainted with the Hand-Writing of Mr. *Layer*?

Bennet. I have seen him write a thousand Times.

Mr. Kettlebey. Do you believe this Paper to be his Hand-Writing? [*The Scheme.*]

Bennet. I do not think it his Hand-Writing. I never saw him write such a Hand as this.

Att. Gen. Shew him that Paper. [*Which was seiz'd in the Bundle.*] Do you know whose Hand-Writing that is?

Bennet. I believe it is my own Hand-Writing.

Att. Gen. By whose Direction did you write it?

Bennet. By Mr. *Layer's* Direction.

Clerk

Clerk of the Court. It is Part of a Jury between *Layer* and one *Watson*.

Att. Gen. This was taken in the Bundle of Papers where the Lifts were.

Mr. Kettlebey. We apprehend we have prov'd this Scheme not to belong to *Mr. Layer* by two Witnesses, who have known him many Years, and seen him write a great many Times.

Vol. vi. p. 305. *Mr. Hungerford.* The Main of the Charge against this Gentleman is, that he design'd to raise an Insurrection. How that is prov'd, I have spoke to already; but this must be allow'd, that whatever Desolation and ill Consequences might have ensued, there has been no Blood shed, no Armies raised, or Invasions attempted; and I think upon such an Evidence as comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reach'd.

Prisoner. My Lord, as to *Lynch*, it appears our going down into *Essex* was purely accidental: We did not stay three Quarters of an Hour at the *Green-Man*, and he went down twice in the Time; and yet all this mighty Business of publishing a Declaration, and talking of an Insurrection, which is the Treason laid as an Overt-Act in *Essex*, was done there before Dinner; and when he was ask'd, if there was any Discourse about such a Design afterwards at the Lord *North and Grey's*, he says, There was nothing said of it; which is very strange, if there was such a Design on foot. As to *Plunket*, it appears, I gave him the half Crown for former Services, and lent him thirteen Shillings to release Major *Barnwell* out of the *Marshalsea*, and another Guinea in pure Charity; and now he pretends it was given him to list Men for the Pretender; but from the Improbability of the Thing, I believe no Person can believe him. As to the Scheme it is only prov'd by a Similitude of Hands; which is not Proof in criminal Cases, especially when the Letters with which the Witness compar'd the Scheme were not produc'd. And in this Scheme not one Man is mention'd by Name, only Soldiers to be had here; the *Tower* to be seiz'd, the *Bank* and the *Exchange* to be seiz'd, and the World to be turn'd upside down: But by whom? Nor is there any Time mention'd, or any Date to it; if it was written by me, which I absolutely

lutely deny, it does not appear but it was written several Years ago; nor is there any Evidence that I acknowledg'd this Scheme to be mine before the Council. How comes it that none of those Lords directly offer'd that Paper to me? and ask'd me, *Is this your Hand-Writing?* There was my Lord Chancellor, my Lord Harcourt, and several other Lords present, that very likely would have ask'd that Question; but either they did not think it material, or they had not the Paper there, or they knew I would deny it.

And, Gentlemen of the Jury, my Lord will tell you, that all this Evidence is nothing, unless you believe an Overt-Act to be done in *Essex*. If what *Lynch* hath sworn doth not affect me, all the rest stands for nothing. Here has been a vast deal of Talk about the Pretender, going to *Rome*, and lifting Soldiers for the Pretender's Service; but this is nothing to the Purpose. I would not have the Jury think that a Man is to be hunted out of his Life by fine Speeches, and far-fetch'd Inuendo's. You will consider the Character of *Lynch*, that he is a Man not to be believ'd: I'll leave it to you, and hope God Almighty will direct you; I ask no more than Justice. If a Man's Life is to be taken away by such scandalous Evidence, there is an End of all your Liberties; your Wives may be taken from you, your Children made Slaves, and all that is valuable to you; your Lives and Estates will be but very precarious.

Sol. Gen. [Having summ'd up the Evidence already given at large, goes on.] My Lord, the first Objection made in Point of Law is, That the Treason the Prisoner is indicted for is Compassing the Death of the King; and one of the Overt-Acts laid is only a Consultation to levy War; which they insist is not an Overt-Act of that Species of Treason, or indeed, any Treason at all, because the Words of the Statute, 25 *Edw. III.* import a War actually levied.

The King's
Counsel Reply.

One can't help being a little surpriz'd to hear this Objection mention'd after that Point has been establish'd by so many Resolutions; and in the very last Case of High Treason in this Court, namely, that of *Ker*, *Dorrel*, and *Gordon*. It was solemnly determin'd by all the Judges, that a Consultation to
levy

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levy War, in order to destroy or depose the King, is an Overt-Act of High Treason in compassing his Death. This was the receiv'd Doctrine before the Revolution; and it has been adher'd to ever since; and though the Act of the Reversal of my Lord *Russel's* Attainder has been mention'd, yet if that were look'd into, I dare say no Declaration will be found in it contrary to this Declaration.

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They object further, That no Overt-Act at all has been done in *Essex*; and then all the Proof of Facts done in *Middlesex* must go for nothing; That the only Transaction at the *Green-Man* in *Essex* was the publishing the Declaration, which is not well prov'd; and if it were, is no Overt-Act of Treason; That the Paper itself is not produc'd, and parol Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have already observ'd, that the Prisoner took back the Paper, and kept it; so that the Writing itself being in the Custody of the Party, we are entitl'd within the ordinary Rule to give parol Evidence of the Contents. Besides, this Declaration was a Part of the treasonable Consultation then had; and it would be the finest Invention to secure certain Impunity to Plotters that ever was thought off, if instead of discouraging the Consultation should be carried on by Papers handed from one to another, and no Body could be convicted, because the Papers are not to be found. Mr. *Kettlebey* was pleas'd to say, That this could be no Overt-Act of Treason, because it was but publishing a Libel; but publishing a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper. And can it be a Question, whether the publishing a Declaration, or a Book, containing Arguments, or offering Rewards, directly to stir up the King's Subjects to rise in Rebellion against him, be High Treason? The treasonable Intent in this Case cannot be doubted; and 'tis certain that the Publication is an Act; what is there then wanting to make it Treason? And the Supposition of the Prisoner's Counsel, that there are no other Acts prov'd in *Essex*, certainly fails them: For *Lynch* deposes, That while they staid at the *Green-Man* they consulted about an Insurrection; and the Prisoner actually propos'd to him the seizing the King's Person,

which

which are two other Overt-Acts laid in the Indictment.

Another Objection raised by Mr. *Kettlebey* is, That we have but one Witness, *Lynch* alone, to the Facts in *Essex*; and the Indictment must fail, unless there are two Witnesses to some Overt-Act in the County where it is laid. But the Law is now clearly settled, That if several Overt-Acts are laid, and some of them are prov'd by one Witness to be done in the County where the Party is indicted, and others of them are prov'd by another Witness to have been committed in a different County, that Evidence is sufficient to maintain the Indictment. And the Reason of this is very evident; for otherwise treasonable Consultation might be carried on in such a Manner, that no Body could be convicted of them: It would be but to lay the Scene upon the Confines of several Counties, and take care not to consult with any two Persons in the same County, then there could not be two Witnesses, and all would be safe.

Having done with their Objections in Point of Law, I shall give some Answer to their Observations on the Fact, which may be reduc'd to this; That it is highly improbable that what the Witnesses have sworn should be true. But before I give particular Answers to what they have offer'd, I beg Leave to say in general, That though in a doubtful Case, where there is any balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight, yet where there is a plain and positive Evidence on one Side, not weaken'd by any Counter-Evidence on the other, the Objection of Improbability can be of little Force.

But to descend to Particulars: They say 'tis strange Vol. vi. p. 315. the Prisoner should be engaged in so dangerous an Undertaking with such Persons as have sworn themselves to be his Accomplices. To which I answer, It is always strange that Men should venture to trust one another with such dangerous Secrets; but certain it is they often do; and as to the Witnesses, they are prov'd by his own Evidence to be Persons with whom he thought fit to hold a Correspondence. Mr. *Kettlebey* insisted much upon the Improbability of *Plunket's* Evidence in those Parts of it which concern *James Plunket* and *Jeffereys* the Nonjuring Parson; that it is not credible that those two Men, whom

whom *Plunket* admits to be absolute Strangers to him, should at first Sight open themselves with so great Freedom to a Fellow of his Degree on a Subject of Treason: But to this I answer, it appears clearly they were in the Confidence of *Layer*, and by his Means both of them might be induced to trust him.

As to the Scheme, which the Counsel for the Prisoner represents as *Foolish and Ridiculous*——
The Scheme of a Madman which could never have taken place. 'Tis true, the Scheme is such a one, as, I hope in God, could never take place any where but in the Heads of those that fram'd it: But this is no Objection to the Credibility of it, provided it be proved; for, Gentlemen, the Consideration is not how it now appears to you or me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper Consideration is, What the Conspirators themselves, with regard to the Views and Principles they went on, might think of it, and examine it in that Light: Compare the several Articles together, and you will find them consistent, all the Parts answering to one another: Every Quarter of the Town is provided for; Dispositions made of certain Numbers of Men; and Care taken to preserve the Communication by Watch-Words; which makes it plain that it was fully consider'd by those who drew it, and framed not at Random, but upon Computation of a Force of which they thought themselves assured: And what though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain Objection against a Plot's finding Credit after it is detected, I'm afraid it would be a sure Method to make such Plots succeed, or at least to secure the Authors from Punishment. Do but intermix some absur'd extravagant Parts in the Plan of the Conspiracy, and then, according to this Reasoning, it is below Notice, and must be suffer'd to go on; or if a Stop be put to its Progress, yet it is incredible, and no body must be believed to be guilty of it. But, Gentlemen, whatever Difficulties may be rais'd against particular Parts of the Written Scheme; yet upon the Grounds and Suppositions, which the Prisoner and his Accomplices proceeded on, their general Design might appear very
feasible

feasable to themselves; for it is plain they had a Dependance, however ill founded, upon Discontents rais'd in the Minds of the People, and on corrupting great Numbers of the Army; and after they had made a Beginning here, it is proved they expected Assistance from abroad.

As to the Testimony of the Prisoner's Witnesses, it is to be observed that they have scarce called any Witness to contradict the Facts contain'd in our Evidence, but only to the Character and Credit of the Witnesses produced for the King. Gentlemen, it is not to be expected that Conspiracies of this kind would be proved by Persons of the best Characters: They can only be proved by those who have been privy to them; and such Persons seldom are of Characters absolutely unblemish'd; and therefore to say that such Witnesses are not to be believ'd, is in effect to say that no Evidence of a Plot is to be believed. The first Witness they call'd on this Head was my Lord *North and Grey*: I am heartily sorry to see his Lordship here, in his present Condition, upon this Occasion; because it obliges me to observe, that here are Circumstances proved that affect him. But what is his Lordship's Evidence? He says, the Prisoner brought *Lynch* to his House, introduced him; and that he was never acquainted with *Lynch* before, but upon *Layer's* Recommendation, received him civilly; that he gave a vile Account of himself when he was first introduced; and that when he came a second Time, his Lordship would not give him a Lodging. But I can't help remarking, that his Lordship gives no Account of any Business which either the Prisoner or *Lynch* had with him, or of any particular Occasion upon which *Layer* introduced him; which was a Matter within his Lordship's own Knowledge. It is a little odd too, that *Lynch* being an absolute Stranger to this noble Lord, and introduced by a Friend to a Person of his great Quality, should have so little regard to his Friend, or the Opinion of that noble Lord, as at the first Interview to give a most vile infamous Character of himself.

As to the other Witnesses to *Lynch's* Credit, Vol. vi. p. 316. they were most of them going to enter into particular Facts, which the Court, according to the constant Course of Evidence, over-ruled them; for if particular

particular Facts were to be given in Evidence to impeach the Character of a Witness, it were impossible for a Witness, having no Notice what will be swore against him, to come prepared to answer such a Charge: Some of these Witnesses say, they have known him but a little while; others know no Ill of him: And for some of the rest, I submit it to the View and Consideration of the Jury, from their Habit and the Appearance they made, whether they ought not to have brought Witnesses to support their Credit.

The same Thing befel them in the Evidence they call'd to *Plunket's* Credit, as in the Case of *Lynch: Barnwell* gives *Plunket* an ill Character, but confirms several of the Facts which the other swore; and Mrs. *Child* likewise supports *Plunket*, as to the Circumstance of his carrying her Husband to the Prisoner's House.

As to Mrs. *Mason*, they have taken a great deal of Pains to prove her an ill Woman; but whatever she be, she is one with whom Mr. *Layer* thought fit to converse, and therefore it is not improbable that she might be entrusted by him; and it is from such only we can have any Discovery. The Prisoner has indeed brought two or three Women, who talk very fast, and seem very angry with her; one of them tells the Jury in a Scolding Way, *She don't care what she says or does*: Another, *That she would take away any Man's Life for the Value of a Farthing*, and such kind of vehement Expressions. It is sufficient to say, that People who talk thus loosely and passionately upon their Oaths, deserve little Credit; but had they brought a much stronger Evidence against the Characters of the King's Witnesses, what would it have availed them? When their Credit in this Cause is undeniably supported, as to several material Facts by the Prisoner's Witnesses themselves, but most strongly by the Papers, against which, I apprehend, nothing has been said to take off their Force. If those Papers are not genuine, how should the Notes signed by the Pretender's Hand, which the Prisoner received from Sir *William Ellis*, come to be amongst them? How should this Scheme, proved to be Mr. *Layer's* own Hand-Writing, have been there? As to the Evidence of *Bennet*, once the Prisoner's Clerk, and now his Solicitor, who swears
he

he believes the Scheme not to be the Prisoner's Hand, though he is willing to carry his Belief as far as he can. He is forced to acknowledge another Matter, which verifies the Papers contain'd in these Packets to be his Master's Papers; for he swears one of them was written by himself for the Prisoner, and by his Direction; which confirms Mrs. *Mason's* Testimony, that these Papers came from Mr. *Laver*.

You have also the Prisoner's own Confession, proved by two Gentlemen of unquestionable Credit; and surely he must be allow'd a good Witness against himself; and though we might safely leave the Credit of our Witnesses on these Observations, yet to take off any ill Impressions, and vindicate their Characters, we shall produce Persons of undoubted Reputation, who will satisfy you that their general Character is such, that they very well deserve to be believed by you: And thus we have fully made good what was open'd to you, That in general there has been a horrid Conspiracy to overthrow our happy Constitution, and deprive us of all the Blessings we enjoy and promise ourselves under this Establishment in his Majesty and his Protestant Family. The Part the Prisoner has acted in this, appears to be very considerable: It has been said indeed, that he is a Man of no Rank or Fortune fit to sustain such an Undertaking; but since it is plain he did undertake it, this serves only to demonstrate he was set on work, and supported by Persons of greater Abilities: And, Gentlemen, this is the most affecting Consideration of all. — But I would not, even in this Cause of your King and Country, say any Thing to excite your Passions; I choose rather to submit the Strength and Consequence of the Evidence to your Judgments; and I beg of your Lordship, for the sake of the King, for the sake of myself, and for the sake of the Prisoner, if I have omitted or misrepeated any Thing, or laid a greater Weight upon any Part of the Evidence than it will properly bear, your Lordship will be pleased to set it right, that the whole Case may come before the Jury in its true Light.

Mr. *Kettleby*. I shall not take up your Lordship's Time, since you have been so well and so long entertained by Mr. Solicitor, at least two Hours by

The Trial of Christopher Layer Esq;

my Watch. 'Twas impossible to think him tedious, though so late at Night, especially since his Conclusion is exactly agreeable to the Conclusion of a late celebrated Solicitor-General upon a like Occasion.

Att. Gen. We shall call some Witnesses to support the Credit of Mr. *Lynch*, and *Matthew Plunket*.

[*Vernon sworn.*]

Serj. Cheshire. What do you know of Mr. *Lynch*?

Vernon. I keep the *Swan and Rummer-Tavern* in *Finch-Lane*. He hath frequented my House these four Months every Day, till he was in Custody. He hath been a good Customer, and paid me honestly.

Serj. Cheshire. Have you seen Mr. *Lynch* and the Prisoner in Company at your House?

Vernon. I have seen them twice in Company at my House.

Mr. Kettlebey. Did he spend his Money freely.

Vernon. Yes: Some Part of it I have had since he was in Custody.

Mr. Kettlebey. How much was he in your Debt before he was in Custody?

Vernon. Ten or eleven Shillings.

Mr. Kettlebey. How long had he been in Custody before he paid you?

Vernon. Not long.

Mr. Hungerford. He had the First-Fruits of his being in Custody. He had some Money, and so he paid you your Reckoning.

[*Captain Malthus sworn.*]

Serj. Cheshire. How long have you known Mr. *Lynch*?

Malthus. About nine Years. I knew him first when he was a Merchant at the *Canaries*. I have traded with him several Times, and have seen him at Home.

Att. Gen. Do you think he would swear falsely?

Malthus. No; I don't think he would.

Mr. Kettlebey. Do you know any Thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

Captain

[Captain Arnold sworn.]

Serj. *Cheshire*. What Character has *Stephen Lynch*? Vol. vi. p. 318.

Arnold. I have known him these fourteen Years. I don't think he would forswear himself; but I never had any Dealings with him.

Serj. *Cheshire*. Would you have trusted him with five hundred Pounds?

Mr. *Kettlebey*. Would you trust him with five Shillings?

Arnold. Five Shillings is a small Sum.

[Colonel Manning sworn.]

Serj. *Cheshire*. Do you take *Matthew Plunket* to be an honest Man?

Col. *Manning*. I have known him above ten Years. He behaved himself like an honest Man.

Serj. *Cheshire*. Do you think he would forswear himself?

Col. *Manning*. No; I believe not.

[Major Hamel sworn.]

Serj. *Cheshire*. What Character hath *Matthew Plunket*?

Maj. *Hamel*. I have known him these seventeen Years. He was a Drummer in the Regiment, and always had a good Character. He went from *Ireland* to *Spain*.

Mr. *Hungerford*. You speak of his Military Conduct.

Mr. *Hamel*. I know of no other.

[Captain Crosby sworn.]

Serj. *Cheshire*. What Character hath Serjeant *Plunket*?

Capt. *Crosby*. He had a good Character while I knew him, which was about three Years.

Serj. *Cheshire*. We won't give your Lordship any farther Trouble.

Mr. *Kettlebey*. And we apprehend we have no Occasion to trouble your Lordship by Way of Reply.

Lord Chief Justice's Observations on the Evidence.

Vol. vi. p. 320.
The Reader will judge by the preceding Evidence whether this Fact be not misstated.

L. C. Justice. **G**entlemen of the Jury, Before I observe on the Evidence I must tell you, that the Law is undoubtedly so : If a Man is charged with Treason, in compassing and imagining the Death of the King, there must be an Overt-Act of that Treason proved in the County where he is indicted ; and if there be such Overt-Act in that County, he may be charged with any Overt-Act of the same Species of Treason in any other County whatsoever. [*After which the Lord Chief Justice proceeds to sum up the Evidence which has already been repeated at large till he comes to this Passage.*] As to the Overt-Act of publishing the Declaration, that is supported beyond Contradiction ; for it appears in the Prisoner's Examination before the Lords of the Council, when he is asked, *Whether ever he saw the Declaration?* he says, *he never saw any but one, and that was drawn by himself.*

Prisoner. My Lord, what Mr. Stanyan says, I believe, he did not say that I confessed that it was drawn by me.

L. C. Justice. You must not interrupt me while I am directing the Jury. You have behaved yourself intemperately hitherto ; but you must not interrupt me ; I can't bear it. The Substance of what Mr. Stanyan said, is, That when it was demanded of you, *Whether you had seen the Declaration?* You said, *You had seen none, but a rough Draught that was drawn by yourself.*

Prisoner. I beg your Lordship's Pardon ; Mr. Stanyan is here in Court ?

L. C. Justice. Let him be asked the Question again.

Quere if any Thing like this appears in the Trial before.

Mr. Stanyan. I believe I did say, *That Mr. Layer did confess it was the Heads of a Declaration which he had drawn himself.*

Or like this.

L. C. Justice. Now, Sir, after this, I expect not to be interrupted by you any more. This being the Matter, he doth at the same time confess, *That that was the Declaration which he had shewn to Mr. Lynch at the Green-Man, on the Way as they were going to Lord North and Grey's ; so that Part of this Evidence is supported by his own Confession.*

[*Then*

[Then his Lordship proceeds to sum up the Remainder of the Evidence: And the Jury withdrawing about Half an Hour, returned into Court, and brought the Prisoner in GUILTY.] He is found guilty. Vol. vi. p. 323.

Att. Gen. We pray a Rule may be made to bring up the Prisoner to receive Sentence.

Mr. J. Eyre. He must have four Days to move in Arrest of Judgment. Let there be a Rule to bring him up on Thursday next.

Die Martis 27 Die Novembris, 1722.

Christopher Layer Esq; was brought to the Bar of the Court of *King's-Bench*, in order to receive Sentence. He is brought to the Bar to receive Sentence.

Att. Gen. My Lord, the Prisoner stands convicted of High Treason; I pray your Lordship's Judgment against him for the King.

Clerk of the Court. *Christopher Layer*, Hold up thy Hand, &c. What can'st thou now say for thyself, why the Court should not give Judgment against thee according to Law.

Mr. Hungerford. I hope your Lordship will order his Irons to be taken off, at least during his Attendance here.

L. C. Justice. I don't know. There is none of the Cases that go further than during the Time of his Trial. I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Serj. Pengelly. My Lord, we don't oppose it.

[Then the Irons was taken off.]

Mr. Hungerford. I am Counsel for the Prisoner. I have, and I hope I shall continue to do him what Service I can. The Prisoner's Life is at Stake; and I hope I shall not be thought troublesome, if I desire a Record to be read, which hath not been read in Court. It is the *Venire*; and that being Part of the Record, we think we are proper to have it read. The Prisoner's Counsel move in Arrest of Judgment.

Att. Gen. I apprehend what they desire is directly contrary to Law. There are no Authorities that the Prisoner should either have Copies of the Process, or that the Process should be read him, only to enable him to find Fault. By the Act of Parliament Copies of the Indictment, and Copies of the Names of the Jury, are directed to be delivered the Prisoner; but as to any

any Process, the A^ct gives no Direction: And therefore, as what they desire is neither founded on Law or Precedent, we hope it shall not be granted.

Vol. vi. p. 324.

Mr. *Hungerford*. Before the A^ct of 7 *Will.* the Prisoner hath desired his Indictment to be read, and the Court never denied it; and it seems as reasonable to have any other Part of the Record read as the Indictment. No Part of the Record of Conviction is more sacred than the other.

L. C. *Justice*. What you ask, you must own, is without Precedent: You cannot produce one Instance that ever the Prisoner desired the *Venire* should be produced, and read to him. We must not establish a new Course; we can't see what the Consequences may be. [*All the rest of the Judges concurred that the Venire ought not to be read.*]

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Prisoner. If it doth appear there is an Error in the Proceedings on the Foot of the *Venire*, I humbly hope I shall have the Benefit of it. The *Venire*, as I take it, is returnable the 19th of this Month of *November*, and I was not try'd till the 21st; therefore whether, or no, after the Return of the Writ, this is a good Conveening of the Jury to try me on a Writ, when there was no such Writ in being? I humbly hope I shall have Leave to look into the *Venire*; and if it comes out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. *Hungerford*. My Lord, there are stated Return Days in the Law; and if a Man appears in a Court of Justice one Day, and he is not by the Course of Proceeding indulged with a farther Day of appearing, there is a Discontinuance of the Process, and the Man is out of Court. I take the *Quarto Die post* to be an Indulgence, which a Court of Justice gives to a Suitor to appear at a farther Day, when he ought to have appear'd at a former Day; and this is the Practice in real Actions in the Court of Common Pleas: But in Cases of Juries, who are not Suitors in Court, I take the Law and Practice to be, that they are obliged to attend upon the Process of the Court. They must do Duty on the Return of the *Venire*, which in this Case is on *Monday* the 19th of *November*; and they did not appear till *Wednesday* the 21st; so that if they were to appear on *Monday* the 19th of *November*, and did not appear, then there must appear some A^ct of the Court by which they

Vol. vi. p. 326.

they were indulged to a farther Day ; and I put it upon Mr. *Harcourt* to shew whether there is any Indulgence of the Court entered upon Record, for the continuing of the Jury till the *Wednesday* following ; and if there is not, there is then a Discontinuance of their being in this Court, and consequently the Proceedings irregular, and the Trial a Mistrial.

L. C. Justice. Because you have appealed to Mr. *Harcourt*, I shall ask him the Question.

Mr. *Harcourt.* If a *Venire* be returnable the first general Return of the Term, the Appearance-Day of the Jury is the *Quarto Die post*, which is the first Day of the Term. If the Court is not pleased to try the Prisoner, then they may adjourn the Jury over to any Day before the next Return ; but no Entry is ever made on Record of such Adjournment, and the Proceedings are always entered on Record to be at the Return of the Writ. In all other Returns in the Term the same Course is observed. The Jury is never obliged to appear before the *Quarto Die post*, nor can the Prisoner be try'd sooner. This Matter was settled on great Deliberation by my Lord Chief Justice *Holt*, and I am confident has been ever since so practised.

Mr. *Kettleby.* Notwithstanding what Mr. *Harcourt* hath said, I must beg Leave to insist, that there hath been a Mistrial, and Judgment ought to be arrested ; for in the Trial of *Rockwood*, it was agreed by the Court, and all the King's Council, that the Trial must be on the Day of the Return of the *Venire*, or else it would be Error. My Lord Chief Justice *Holt* declared, the Issue could not be tried after the Day of the Return.

Mr. *J. Eyre.* That was on a Commission of Oyer and Terminer, which was quite different ; there is no *Quarto Die post*, no Day of Appearance, but the Day of the Return of the Writ. Vol. vi. p. 327.

Mr. *Harcourt.* If this was to be a Discontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Distingas*, which always bear Test the *Quarto Die post* after the Return of the *Venire* ? Every one of these Records, which are many every Term, would be discontinued.

L. C. Justice. You can't but be sensible there is nothing in this Objection.

The Trial of Christopher Layer Esq;

Prisoner. My Lord, I humbly offer to your Lordship, that the Overt-A&t of Treason in *Essex* found by the Jury, is no Overt-A&t at all; tho' there was a consulting and agreeing in order to levy War, yet it doth not appear that War to be levied was such a War, as in Law is adjudged to be Treason.

Mr. Hungerford. My Lord, he hath justly observed, ———

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Serj. Pengelly. My Lord, I would not interrupt *Mr. Layer*, because it may be supposed, he is not so well acquainted with the Proceeding; but, I hope, I may take the Liberty to interrupt his Counsel, who know by very great Experience the Method of Proceeding, that they are not now to insist on the Nature of the Evidence, whether it be sufficient to maintain the Indictment; that is not the Business of this Day. If they have any Thing to offer in Arrest of Judgment, that they are at Liberty to do.

Att. Gen. The Counsel for the Prisoner know very well, that the Evidence given at the Trial is not now before your Lordship. Let them apply themselves to move in Arrest of Judgment, if they can find any Thing on the Face of the Record of which they can take Advantage.

Mr. Hungerford. My Lord, I shall conform myself to the Rules the King's Counsel prescribe, to observe upon nothing but the Record. The Indictment is in this Manner: The Species of Treason laid to the Charge of the Prisoner, is the Compassing and Imagining the Death of the King. The first Overt-A&t of that Treason is, that he did meet, consult, conspire, and agree, to raise a Rebellion and War in the Kingdom, which is no Overt-A&t of Compassing and Imagining the Death of the King.

L. C. Justice. *Mr. Hungerford*, we would hear you any Thing that is proper; but consider, if you are not offering a Matter in Arrest of Judgment, that hath been determined against you an hundred Times. Hath not it been constantly allowed as an Overt-A&t of Treason in compassing and imagining the Death of the King, if the Parties did meet, and consult, and agree to levy War; and do you think we will give a Judgment contrary to our learned Predecessors in Cases of the greatest Moment?

[All the other three Judges gave their Opinions, *That the Consulting and Agreeing to levy War was an Overt-Act of Treason in Compassing and Imagining the King's Death.*]

Vol. vi. p. 329.
Consulting to levy War an Overt-Act of compassing the King's Death.

Mr. *Hungerford*. There is another Thing arises upon another Overt-Act in the Indictment, that is *publicavit quoddam Scriptum, &c.* I apprehend the Substance of the *quoddam Scriptum* ought to be mentioned in the Indictment, by the Rule given by all the Judges of *England* in Dr. *Sacheverell's Case*. In all Accusations, whether by Information or Indictment, the Words supposed to be Criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

L. C. Justice. If but one Overt-Act is well laid and proved, it is sufficient. I am sorry you will force me to remember what I would willingly forget: I remember, Mr. *Hungerford*, you were pleased to compare the Declaration to a Ballad, and said, he might as well publish a Ballad. Is this an Expression fit to be used when a Prisoner is on Trial for his Life, and an Insurrection is proved to be intended against the King? is this to be treated in so ludicrous a Manner?

Mr. *Hungerford*. I am sure I did not say he might as well publish a Ballad, and make it Treason. I have more Duty and Regard to his Majesty, and the Quiet of his Kingdom, than to express myself so. What I then observ'd was, That there were but few Minutes to transact the Business at the *Green-Man*: That what was done, could not amount to the publishing of a Declaration, when there was nothing done but a Man's reading to himself. I knew the whole Accusation turn'd upon that Transaction at the *Green-Man*; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and in this, if I have offended your Lordship, I beg your Pardon.

Mr. *Kettlebey*. I must beg Leave to observe, That if any one of the Overt-Acts laid in the Indictment appears to be bad, Judgment ought to be arrested.

L. C. Justice. Quite the contrary. If one Overt-Act holds, the Indictment is good: You will find

If any one Overt-Act holds, the Indictment is good.

it so in *Rockwood's* Trial, which you have in your Hand.

Vol. vi. p. 330. Mr. *Kettlebey*. I cannot find any such Thing in *Rockwood's* Trial, or any where else, that one good Overt-Act should maintain the whole Indictment. I admit three or four of them to be good as laid in this Indictment. The only Objection I have, is to the Uncertainty of that which relates to the publishing of a malicious, scandalous, seditious, and traitorous Writing, *continen' & purportan'*, &c. The Rule my Lord *Coke* lays down in his *First Institutes*, Fol. 303. is, That in Indictments a Certainty to a common Inrent is not sufficient. The Words here are, that he *Publicavit quoddam malitiosum, seditiosum, & proditorium scriptum*, and then sets forth only the Substance of the Libel in general. Is there not the same Reason that the Words should have been set forth in this Indictment, as in an Indictment for a Libel, that so the Court might judge upon the Face of the Indictment, whether they did import an Excitement and Exhortation *levare guerram*? I must own in two or three late Cases, the Words have not been set forth. In *Francia's* Case the Indictment charg'd, That he wrote several Letters notifying his Intention to levy War, without particularizing the Words of those Letters, or the Substance of them. The Question was not upon an Arrest of Judgment, but came on in the Course of the Trial, whether such Evidence should be allow'd. It was insisted, there was a Letter mention'd, and the Substance of that Letter ought to have been set forth in the Indictment, or else the Letter itself ought not to be read, much less a Copy of it enter'd in the Prisoner's Book as Evidence against him. And I must beg Leave to rely on the solemn Resolution of all your Lordships in Dr. *Sacheverell's* Case, *That the very Words should be expressly set forth in all Indictments* whatsoever. In the Case of Colonel *Sidney* the very Words were set forth. And where there is a Libel, a Book, or Letters, charg'd as the Overt-Act of that which is supposed to be Treason, and upon which the Offence is grounded, they ought to be so far set forth, that a Person may have an Opportunity to clear himself of the Accusation. I don't know any Precedent to the contrary, but that of *Francia's* Case, where there was not any Opportunity

tunity of debating it, he being acquitted on his Trial, and the Case of *Coleman*, which was before any Counsel was allow'd.

L. C. Justice. The Objection was taken in *Francia's* Case as properly, as if it had been in Arrest of Judgment, and was over-rul'd. And as to what you say, that the Words must be set forth, it is perfectly wrong; a Man may set forth the Substance of the Words, without shewing the Words themselves. This is the Way that is proper to be taken.

Mr. J. *Eyre*. It was indeed the Opinion of the Judges at Dr. *Sacheverell's* Trial, that the particular Words, supposed to be criminal, ought to be expressly specified in every Indictment. And I can't forbear saying, that it was a great Surprize to *Westminster-Hall*, and particularly to those who attended this Court; for we had learn'd from my Lord Chief Justice *Holt*, that a Libel might be describ'd either by the Sense and Substance, or by the particular Words; and that an Indictment or Information in either of these Forms would be good. In the Books of Entries you will find several Instances where Slanders and Perjuries are charg'd in *Latin* as false and scandalous Assertions, and not in the Words spoke. In *Haley's* Case, * who was indicted for treasonable Words, it was charg'd in the Indictment, that speaking of the King he had traiterously declar'd, *Quod ipse prædictus Haley ipsum Dominum Regem interficeret*. And the Fact was, that *Haley* in Conversation had spoke Words to this Effect in *French*; and this was thought sufficient to convict him of High Treason; and yet the particular Words suppos'd and adjudg'd to be criminal were not specified in the Indictment; and I don't find that the specifying of the particular Words was ever held to be necessary, till this sudden Opinion was given; and therefore I can't hear it urg'd as an Authority, without offering my Reasons to the contrary.

Serj. *Pengelly*. I desire to put Mr. *Kettlebey* this Case: Suppose any one had proclaim'd the Pretender at *Charing-Cross*, and had read his Declaration, exciting the People to revolt, &c. and this Declaration

Sufficient to set forth the Substance of the Words, supposed to be criminal in an Indictment.
Vol. vi. p. 331.

* *Michaelmas*, 30 Car. II. B. R. Trial 74. *Rex in Grieppe, Trin.*
8. 21.

The Trial of Christopher Layer Esq;

tion had been carried off, so that it could not be recover'd and produc'd in Evidence, whether that Person might not be indicted for High Treason, without setting forth the particular Words which he read out of such Declaration?

Mr. Kettlebey. The reading of the Paper in that Case would be sufficient.

L. C. Justice. Have you any Thing farther to offer?

Clerk of the Court. *Christopher Layer,* hold up your Hand. You have been indicted of High Treason, &c.

Prisoner. I have nothing more to say, because my Counsel have given it up; but after your Lordship has pass'd Sentence upon me, I desire a reasonable Time to settle my Accounts with my Lord Londonderry, and others I have Dealings with; and I hope your Lordship will give me still further Time to make up that great Account I have in another Place; and then if his Majesty don't think fit to continue me in this World, I will dare to die like a Gentleman and a Christian, not doubting but that I shall meet with a double Portion of Mercy and Justice in another World, though it be denied me in this.

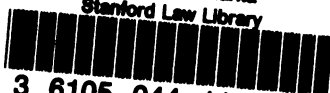
After which the Lord Chief Justice proceeded to pass Sentence as usual in Cases of High Treason.

He was executed May 17. when he made a short Speech; wherein he avowed the Principles for which he suffer'd, recommending the Interest of the Pretender, and said, *He had committed his Thoughts to Writing, and left it with a Friend.* But this Writing never appear'd in Publick.

The End of the Eighth Volume.



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